

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

April 3, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Telrite Corporation d/b/a Life Wireless Notice of Oral *Ex Parte***
Presentation; WC Docket No. 11-42

Dear Ms. Dortch:

On March 30, 2017, John Heitmann and Jameson Dempsey of Kelley Drye & Warren LLP met on behalf of Telrite Corporation d/b/a Life Wireless (Telrite or the Company) with Nicholas Degani, Senior Counsel to Federal Communications Commission (FCC or Commission) Chairman Ajit Pai. In the meeting, we discussed issues consistent with our advocacy¹ in response to TracFone Wireless's request for clarification dated January 18, 2017,²

¹ See Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (Mar. 29, 2017); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Reply Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone's Request for Clarification (filed Mar. 9, 2017); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone's Request for Clarification (filed Mar. 2, 2017); Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 24, 2017); Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 17, 2017); See Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 27, 2017).

² See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017).

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and the Wireline Competition Bureau's subsequent public notice.³ During the meeting we distributed a copy of each of our relevant submissions, which are attached hereto.

Pursuant to Section 1.1206(b) of the FCC's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Jameson J. Dempsey
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

*Counsel to Telrite Corporation d/b/a Life
Wireless*

cc: Nicholas Degani

Enclosures

³ See *Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, WC Docket No. 11-42 (rel. Feb. 16, 2017).

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April 3, 2017
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Exhibit List

- Exhibit A – Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (Mar. 29, 2017)
- Exhibit B – Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Reply Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone’s Request for Clarification (filed Mar. 9, 2017)
- Exhibit C – Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone’s Request for Clarification (filed Mar. 2, 2017)
- Exhibit D – Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 24, 2017)
- Exhibit E – Telrite Corporation d/b/a Life Wireless Consumer Choice, Innovation, and the Future of the Lifeline Program (Feb. 24, 2017)
- Exhibit F – Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 17, 2017)
- Exhibit G – Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 27, 2017)

ENCLOSURES

Exhibit A

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

March 29, 2017

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Telrite Corporation d/b/a Life Wireless *Ex Parte* Presentation;
WC Docket Nos. 11-42**

Telrite Corporation d/b/a Life Wireless (Telrite), by its attorneys, submits this letter in response to TracFone Wireless, Inc.'s (TracFone's) reply comments in response to the Commission's February 16, 2017 public notice seeking comment on TracFone's January 18, 2017 request for clarification.¹

TracFone's strident tone and willful ignorance of the facts and the law doesn't make its case compelling. In fact, it lays bare TracFone's true purpose: using the regulatory process *once again* to try to shield itself from competition and competitors that have out-innovated and out-competed them.² This latest request follows the pattern of seeking to curb innovation in a manner that would harm consumers while favoring TracFone's own business model.³ As a result, TracFone misses the

¹ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Reply Comments of TracFone Wireless, Inc. (filed Mar. 9, 2017) (TracFone Reply); *Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, WC Docket No. 11-42 (rel. Feb. 16, 2017); Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017).

² TracFone has often resorted to questionable behavior to advance its interests. Underscoring this point is the fact that Telrite just this week had to send TracFone a letter demanding that TracFone cease and desist from falsely advertising "Life Wireless Phones" and infringing on Telrite's Life Wireless mark.

³ This isn't the first time that TracFone has sought to suppress competition through the regulatory process. For example, TracFone has repeatedly asked the Commission to prohibit the most effective means of reaching low-income consumers—in-person enrollment and handset distribution and commission-based agents—in favor of TracFone's own preferred Internet-based enrollment

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key issue: whether mobile BIAS can be provided to Lifeline subscribers using technologies that leverage unlicensed spectrum in the same way it is provided to non-Lifeline subscribers or whether Lifeline subscribers will be relegated to a limited selection of cookie-cutter cellular data products. TracFone, it appears, would rather the Lifeline program be shunted to licensed, cellular services with limited data plans than to compete fairly in the market and permit consumer choice and innovation. Fortunately, neither the laws, nor the facts, nor sound public policy support TracFone's view.

First, TracFone deliberately attempts to confuse the Commission by improperly conflating its handset and Premium Wi-Fi arguments.⁴ The issues raised by TracFone—whether the Lifeline Modernization Order⁵ requires smartphones as the only means of accessing mobile BIAS and whether mobile BIAS is limited to cellular data services—are distinct issues. With respect to devices, the facts are clear. All Telrite subscribers are provided a 3G-or-better SIM card, which provides access to BIAS that meets the minimum service speed standard. Over 72 percent of Telrite subscribers have a smartphone, and only these subscribers have been provided with a plan that relies primarily on Premium Wi-Fi service to meet the minimum service standards.⁶ Of the minority of subscribers with a feature phone—including Blackberry-style phones with large screens, QWERTY keyboards, and access to social media applications—all are provided 500 MB of cellular data and have access to a browser that can access all or substantially all Internet

operations. See *Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, *Petition for Rulemaking*, (filed May 13, 2013) (2013 TracFone Petition). Notwithstanding its advocacy (or perhaps underscoring the disingenuous nature of it), TracFone itself uses in-person enrollment and hand-set distribution, as well as commission-based agents.

⁴ TracFone Reply at 2 (asking the Commission to “clarify that reliance on Wi-Fi and feature phones meets neither the letter nor the intent of the Commission’s minimum standards”), 3 (claiming that “only Telrite had the temerity to assert that 3G feature phones and reliance on Wi-Fi . . . are sufficient to meet the Commission’s mobile BIAS minimum standard”), 11 (arguing that “the Commission never intended for ETCs to provide broadband Lifeline service accessed through 3G feature phones and relying on other providers’ Wi-Fi hotspots” to meet the minimum service standards).

⁵ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order).

⁶ TracFone does not volunteer the percentage of smartphones in its Lifeline customer base—likely because it is tiny.

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endpoints (or the functional equivalent).⁷ All feature phone subscribers may upgrade their handset to a smartphone for free.⁸ Any subscriber that has remained on a feature phone has had the opportunity to request a free upgrade to a smartphone after 180 days. As such, it is false to claim, as TracFone does, that Telrite's plans rely on both 3G feature phones *and* Premium Wi-Fi to meet the minimum service standards. All Telrite subscribers either have a smartphone and a plan with both Premium Wi-Fi service and cellular data, or have a feature phone with 500 MB of cellular data. In *both* cases, the service plan meets the mobile BIAS minimum service standards.

Second, TracFone misrepresents the Commission's handset rules and Telrite's offerings. In TracFone's alternate reality, the Lifeline rules not only require an ETC to provide each subscriber with a smartphone, but also impose particular product specifications, including large screen size, data storage capacity, video capabilities, and the ability to download "millions" of apps. While Telrite's devices typically meet these aspirational standards, the Commission's Lifeline rules impose no such requirements. The Lifeline Modernization Order did not require ETCs to provide smartphones, and only requires that if an ETC provides a consumer with handsets, the handset must be Wi-Fi enabled and some percentage of the ETC's handsets must be hotspot capable. There is no suggestion in the rules that if the ETC does not provide a handset, is it not providing mobile BIAS. Telrite's offerings meet the standards that the Commission has set forth, and if TracFone would like to refresh its request that the Commission to impose new handset requirements, the appropriate venue is a petition for rulemaking, not a request for clarification.

Third, TracFone misstates the law with respect to mobile BIAS and Telrite's Premium Wi-Fi service. In its reply comments, TracFone concedes two major points. First, TracFone agrees that Wi-Fi enabled broadband is BIAS.⁹ Second, TracFone concedes that the consumer's device is a mobile station.¹⁰ As such, TracFone both agrees that Telrite's Premium Wi-Fi service is BIAS and that the devices that Telrite's subscribers primarily use to access its Premium Wi-Fi service are "mobile stations," meeting the letter of the "mobile BIAS" definition.¹¹ Rather than

⁷ TracFone does not volunteer information on its embedded base of feature phones—likely because it did not invest in more sophisticated handsets and provided its Lifeline subscribers with cheap handsets that have very limited functionality.

⁸ TracFone does not volunteer its free smartphone upgrade program—likely because it doesn't have one.

⁹ See TracFone Reply at i, 9 (noting that "[t]here are important differences between fixed broadband, including Wi-Fi, on the one hand, and mobile broadband, on the other hand.").

¹⁰ See TracFone Reply at 7 (explaining that "the definition of mobile BIAS assumes that the *device* will be moving while being used") (emphasis added).

¹¹ While the rules support a finding that Telrite's Premium Wi-Fi service is mobile BIAS, it also meets the definition of fixed BIAS because it utilizes fixed BIAS access points. As such, if the service plan meets the fixed BIAS minimum service standards of at least 150 GB of data and advertised speeds of 10/1 Mbps, it would qualify for the 12-month benefit port freeze. As Telrite

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concede that Telrite's Premium Wi-Fi service is mobile BIAS, however, TracFone erroneously argues that mobile BIAS service "must enable a customer to seamlessly and continuously have access to the Internet at all location points."¹² Relying on this fictional requirement, TracFone suggests Telrite's Premium Wi-Fi service is not a mobile service because of the "limited geographic range of Wi-Fi routers" and because there are "no assurances that a consumer's mobile device will remain connected to the Internet as the consumer moves out of the coverage area of a hotspot."¹³ As Telrite argued in its reply comments, there is no requirement that a service must provide such geographically ubiquitous access to the Internet. Indeed, it would be difficult for even cellular BIAS to meet that standard, especially in rural areas or in areas where terrain or physical barriers prevent "seamless and continuous" connectivity.¹⁴ Moreover, TracFone fails to distinguish between traditional, public Wi-Fi service—one or a small number of access points offered to consumers for free as an ancillary benefit to some other business (e.g., a hotel or coffee shop)—and Telrite's Premium Wi-Fi service, which involves the resale of a *network* of millions of access points and SmartConnect technology designed to permit automatic hops between the strongest nearby access points while a subscriber is on the move. Thus, the issue is not whether Wi-Fi is mobile BIAS, but rather whether a nationwide network built on resold broadband access points over unlicensed spectrum, and intended for use with smartphones, is mobile BIAS. On that latter question, the answer is yes. As stated above, Telrite's Premium Wi-Fi service is BIAS and relies primarily on mobile stations—smartphones—and therefore meets the definition of mobile BIAS.

Fourth, TracFone fails to provide compelling evidence that Telrite's Premium Wi-Fi service is not available or is not meeting consumer expectations, and ignores contrary evidence. TracFone provides no evidence that "[f]ew" iPass access points "are located in low-income residential areas and are unlikely to be of use to Lifeline customers."¹⁵ The marketing materials that TracFone cites are geared toward business travelers and enterprise customers, rather than consumers (Telrite is iPass's first consumer-focused reseller), and so the fact that those

has argued, its Premium Wi-Fi service provides unlimited data each month and can support speeds that meet or exceed the fixed BIAS speed standard.

¹² See TracFone Reply at 7.

¹³ See *id.*

¹⁴ As for the limited range of Wi-Fi routers, similar observations could be made about today's femtocells, which have "limited geographic range" of only a few meters and provide no assurance that a consumer will "remain connected to the Internet" when it moves out of range. However, it would be bizarre—and incorrect—to suggest that a data service connecting through femtocells and other small cells is not mobile BIAS, even where there are gaps in coverage. Moreover, TracFone appears to assume that technology will remain static. Of course, this assumption likely is faulty as improvements in technology used to leverage unlicensed spectrum have been coming at a rapid pace.

¹⁵ See TracFone Reply at 7.

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materials reference hotels, convention centers, and airports should be expected.¹⁶ Moreover, the only low-income ZIP Code that TracFone submits to support its argument is a Florida ZIP code in which Telrite has no Lifeline subscribers. Further, TracFone ignores the fact that iPass relies on residential broadband connections through partnerships with national and regional broadband providers, providing BIAS that includes millions of homes. TracFone also fails to provide evidence of widespread consumer dissatisfaction with Premium Wi-Fi service. Indeed, the sole subscriber who has formally complained about Telrite's broadband service is a smartphone customer *who also receives 500 MB of cellular data*. In addition, TracFone ignores the steps that Telrite took to responsibly notify and educate its subscribers about its new Premium-Wi-Fi-enabled offering, including a text message and online notice that explicitly mentioned the new offering and the port freeze.

Fifth, TracFone and its misguided group of civil society supporters misconstrue the purpose of the benefit port freeze and advance a proposal that would constrain consumer choice and innovation in the Lifeline program. TracFone's reply comments suggest that "leading consumer groups" "articulate consumer interests, including those of low-income Lifeline customers."¹⁷ However, the civil rights and public interest organizations who typically represent the interests of consumers in this docket—including National Consumer Law Center, Free Press, Public Knowledge, the United Church of Christ-OC, and the National Hispanic Media Coalition, and many others—have not filed in support of TracFone's request. Instead, the few commenters who filed in response to TracFone's request ask the Commission to "stop the abuse" of the benefit port freeze, which they argue "is being used to limit consumer choice and access to true broadband service and broadband-suitable devices."¹⁸ As though written from a script provided by TracFone, these claims are neither representative nor factually accurate. By providing a new, innovative service offering, Telrite is not abusing the benefit port freeze, but rather is demonstrating its benefits. Telrite's service provides consumers with an additional choice in the marketplace—they can select traditional cellular data plans with limited data or they can choose Telrite's hybrid service that includes both its unlimited Premium Wi-Fi service and cellular data. Consumers that select Premium Wi-Fi service have demonstrated that the service is more "meaningful" to them, a subjective determination based on their own unique needs. Moreover, these commenters miss the

¹⁶ See TracFone Reply at 7 n.12.

¹⁷ See TracFone Reply at i, 3. Note that the "leading consumer groups" supporting TracFone's position are those same few that have supported other anti-competitive TracFone proposals; *see, e.g.*, Letter from Ken McEldowney, Consumer Action, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42, 2 (June 17, 2013) (supporting TracFone's call to ban in-person handset distribution).

¹⁸ Letter from Ken McEldowney, Consumer Action, and Sally Greenberg, National Consumers League, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Mar. 2, 2017).

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point: the benefit port freeze was intended to reduce flipping among existing Lifeline subscribers, and the decrease in porting reflects the intended policy outcome. The fact is, 70 percent of the Lifeline market remains unaddressed,¹⁹ and TracFone and its agents remain free to enroll those subscribers, rather than poaching from other ETCs and undermining Commission policy. Further, as explained in more detail below, subscribers always have the option to change service before the 12-month deadline, for example, by switching to a voice plan. In this way, no consumer is “locked up,” and all consumers now have the ability to choose between a traditional, limited cellular data plan and a new, innovative offering in the marketplace that offers unlimited mobile data. To limit mobile BIAS to licensed, cellular data, as TracFone would have it, or to facilities-based operators, as Sprint would have it,²⁰ would only limit consumer choice and innovation in a manner that would widen the digital divide.

Sixth, TracFone’s gambit appears to reflect not a legitimate regulatory concern, but rather an attempt to suppress competition in favor of its preferred business model.

TracFone’s offerings, when compared to Telrite’s, are inferior. For example, in states with a \$9.25 subsidy, TracFone only offers consumers 350 minutes of voice service compared to Telrite’s 500 minutes, and only 500 MB of traditional cellular data compared to Telrite’s data service with unlimited Premium Wi-Fi service and 10 MB of traditional cellular data.²¹ As a result, to the average consumer, Telrite provides significantly more value for the Lifeline benefit than TracFone. It’s no surprise, then, that TracFone has rushed once again to the Commission rather than increase its offerings, just as it did with its repeated calls to ban in-person handset distribution and commission-based agent compensation.²² The Commission should not fall for TracFone’s latest attempt to beat back competition and innovation with regulation.

Seventh, TracFone’s call for enforcement is misdirected and relies on a fundamental misunderstanding about the mechanics of the 12-month benefit port freeze and Telrite’s own practices. The central purpose of the 12-month benefit port freeze is to stabilize the customer-carrier relationship to incentivize ETCs to provide consumers with broadband, innovative service

¹⁹ See Letter from Michelle Garber, Vice President, Lifeline Division, Universal Service Administrative Company, to Ryan Palmer, Chief, Telecommunications Access Policy Division, Federal Communications Commission, WC Docket No. 11-42, Attachment at 5 (Feb. 24, 2016); see also *#Solutions2020 Call to Action Plan – FINAL*, Public Notice, 3 (Mar. 27, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0327/DOC-344081A1.pdf.

²⁰ See Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42, et al. at 1 (Feb. 15, 2017).

²¹ Compare Life Wireless Plans, <https://www.lifewireless.com/main/plans> with TracFone Plans, https://www.safelinkca.com/TracFoneWeb/en/index2.html#.

²² See generally 2013 TracFone Petition.

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offerings, and, to the extent they are provided, better devices such as smartphones. Much to the chagrin of TracFone and its highly compensated agents, the rule is working as intended.²³ As Telrite explained at length in its advocacy on this issue, its broadband offering is both made possible by the 12-month benefit port freeze and advances the goals of innovation and consumer choice in the Lifeline program.²⁴ These plans provide, at no cost to the consumer, 500 minutes of voice, unlimited text messages, cellular data, and unlimited Premium Wi-Fi service, an offering that as a whole provides significant consumer value. As such, TracFone is wrong to suggest that Telrite is “gaming the system” or attempting to “lock up” customers into “second-class” plans that do not meet their needs.²⁵ Indeed, after Telrite notified subscribers about their service upgrade to Premium Wi-Fi and the 12-month benefit port freeze, nearly all retained their service with Telrite. Moreover, if any consumer believes that they were not obtaining the level of service that they expected, he or she can request to switch to a voice-only plan and take advantage of the 60-day benefit port freeze. As such, no subscriber is locked in to his or her service and all retain the ability to switch providers. For these reasons, TracFone’s call for enforcement is yet another unfounded attempt to use the regulatory process to gain competitive advantage.

Pursuant to section 1.1206(b) of the Commission’s rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Jameson J. Dempsey
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

Counsel for Telrite Corporation d/b/a Life Wireless

²³ TracFone pays its agents approximately double the average Commission paid to agents by most Lifeline ETCs. Rather than organize and run their own community-outreach events, TracFone’s agents tend to prey on those set up by other ETCs.

²⁴ See Telrite Reply at 6.

²⁵ See TracFone Reply at 12.

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cc: Nick Degani
Jay Schwarz
Amy Bender
Claude Aiken
Trent Harkrader
Ryan Palmer
Garnet Hanly
Jodie Griffin
Rashann Duvall

Exhibit B

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
)	
)	

**REPLY COMMENTS OF TELRITE CORPORATION D/B/A LIFE WIRELESS IN
RESPONSE TO TRACFONE’S REQUEST FOR CLARIFICATION**

Telrite Corporation d/b/a Life Wireless, by and through the undersigned counsel, respectfully submits these reply comments in response to the Federal Communications Commission’s (FCC’s) request for comment on TracFone Wireless, Inc.’s request for clarification.¹ Specifically, we address three issues that the Oklahoma Corporation Commission Public Utility Division (PUD) raises in its comments.² First, the Commission should not play the

¹ See *Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, WC Docket No. 11-42 (rel. Feb. 16, 2017); see also Letter from Mitchell F. Brecher, Greenberg Traurig, LLP to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 18, 2017) (TracFone Request); Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 19, 2017).

² *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Comments of the Public Utility Division of the Oklahoma Corporation Commission (filed Mar. 2, 2017) (PUD Comments). Sprint also submitted comments that largely reiterate points it had already made in this docket. See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Comments of Sprint Corporation (filed Mar. 2, 2017). In these reply comments, Telrite briefly responds to two issues that Sprint raised in its comments. First, Sprint again fails to distinguish Telrite’s Premium Wi-Fi service from traditional free, public Wi-Fi service. Telrite’s Premium Wi-Fi service is a mass-market retail service that creates a single network of millions of access points, buttressed by a secure last-mile VPN, and enables mobility, speed and security. These unique features distinguish it from traditional free, public Wi-Fi, which often provides consumers with access to only one or a few access points within a single premises for a limited time or data allotment, and which the Commission has found is not BIAS because it is not a

role of “innovation gatekeeper” in the Lifeline program, but rather should let consumers decide which offerings are best for them. Second, Telrite’s Lifeline offering provides ample consumer value that demonstrates the importance of the 12-month benefit port freeze in advancing the goals of the Lifeline Modernization Order.³ Third, we agree that transparency is important to enable consumers to make informed decisions about their broadband service, and submit that Telrite takes sufficient steps to notify and educate consumers about its Premium Wi-Fi service, the difference between its Premium Wi-Fi service and cellular data, the consequences of enrolling in Telrite’s broadband offering, and alternatives if the subscriber prefers a different option.

I. THE COMMISSION SHOULD NOT PLAY THE ROLE OF “INNOVATION GATEKEEPER” IN THE LIFELINE PROGRAM, BUT RATHER SHOULD LET CONSUMERS DECIDE WHICH OFFERINGS ARE BEST FOR THEM

In its comments, the PUD raises questions about the service availability and functionality of Telrite’s Premium Wi-Fi service. With respect to availability, the PUD argues that the availability of BIAS services is as important as the quality and usage standards, and suggests that

mass-market retail service. Indeed, the Commission found that such Wi-Fi service could be BIAS if it were offered on a mass-market retail basis or “intentionally offered for the benefit of others,” as Telrite’s Premium Wi-Fi service is. *See Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 340 (rel. Mar. 12, 2015) (2015 Open Internet Order). Second, we agree with Sprint that if an ETC provides a device to a consumer, it should be 3G-capable, but reiterate that on a GSM network, the operative “device” is the SIM card, rather than the handset, since the eligible telecommunications carrier (ETC) does not control the handset. To rule otherwise would impose a requirement on ETCs that they are not able to meet except by limiting subscribers’ ability to select and use the handsets of their choice. As such, where a SIM card is 3G-capable, the offering meets the minimum service standards.

³ *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order).

“the FCC should consider the actual and practical availability of the Wi-Fi service.”⁴ Based on information on the website of iPass, Telrite’s Premium Wi-Fi wholesaler, the PUD suggests that the location of iPass Wi-Fi hot spots is limited to locations that may not be common areas in which Lifeline subscribers would find themselves trying to utilize their Lifeline supported BIAS.

As a factual matter, Telrite’s Premium Wi-Fi service is available in a wide variety of locations, leveraging a network of 34 million access points that include residential neighborhoods, multi-dwelling units, busy commercial corridors, local businesses, transportation hubs, community anchor institutions, and other common and public areas. Further, it’s important to remember that Premium Wi-Fi is just one element of a Telrite subscriber’s service bundle, which also includes cellular talk, text and data. Telrite’s subscribers always have the ability to access and purchase additional cellular voice and data service if they need more. In addition, while some consumers may prioritize a service with the most widespread geographic availability, many other consumers may place more emphasis on speed, data quantity and security when deciding between various Lifeline offerings. To facilitate this decision-making process, Telrite notifies all consumers that its Premium Wi-Fi service is different from traditional cellular data service and that while access to Premium Wi-Fi service is unlimited, geographic availability of Premium Wi-Fi access points is different and typically more limited.

With respect to the functionality of Telrite’s Premium Wi-Fi service, the PUD asks whether Telrite’s Premium Wi-Fi service allows a “mobile Lifeline subscriber who is literally ‘on the move’ to maintain a connection with an Internet endpoint when there is a switch between Wi-Fi hot spots.”⁵ As an initial matter, the Commission’s definition of mobile BIAS does not

⁴ See PUD Comments at 5.

⁵ See *id.*

require ubiquitous, seamless handoffs, and to require every mobile service to exhibit such seamlessness would raise serious concerns about whether many rural cellular networks could meet the standard. Further, as a legal matter, Telrite's Premium Wi-Fi service meets the definition of mobile BIAS because it enables connectivity during halts at unspecified points or on the move.⁶ Even if the standard did require services capable of handoffs, Telrite's Premium Wi-Fi service meets the standard through its SmartConnect functionality, which automatically connects subscribers to the strongest nearby hotspot in a manner than is imperceptible to the user. Moreover, because all Telrite subscribers have access both to cellular data and to Telrite's Premium Wi-Fi, Telrite's broadband service enables them to access the Internet on the move even where there is not a nearby access point. To be sure, some subscribers may need to purchase additional cellular data, but that does not undermine the fact that Telrite's broadband service enables seamless connectivity either on Premium Wi-Fi service or on cellular data.

Finally, the PUD notes in its comments that the Commission's minimum service standards rely on data sources that exclude Wi-Fi delivered services (e.g., the annual Mobile Competition Report and the FCC Form 477), and suggests that if the Commission agrees that Wi-Fi delivered broadband counts toward the minimum service standards, it "should ensure that such service is included in whatever metrics are used to establish minimum service standards."⁷ Telrite has joined other providers in requesting reconsideration of the minimum service standards, which are flawed in at least two significant ways.⁸ First, by basing the standards on

⁶ See 47 C.F.R. § 2.1(c) (defining a "mobile station").

⁷ See PUD Comments at 4.

⁸ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, 3-13 (filed June 23, 2016).

average household usage, the standards impose family-sized portions on all Lifeline beneficiaries, even when individual-sized portions would be more appropriate and affordable. Second, the framework for adjusting minimum service standard supplants consumer choice with regulator choice, without any evidence that consumers will fail or have failed to make reasonable choices or that the marketplace has not and will not function effectively.⁹ To the extent that the Commission adopts the PUD's proposal, it should do so only to the extent that Wi-Fi (or any other technology) is integrated into a mass-market, retail broadband offering (i.e., where it is BIAS).¹⁰

II. TELRITE'S LIFELINE OFFERING PROVIDES AMPLE CONSUMER VALUE THAT DEMONSTRATES THE IMPORTANCE OF THE 12-MONTH BENEFIT PORT FREEZE IN ADVANCING THE GOALS OF THE LIFELINE MODERNIZATION ORDER

The PUD asks the Commission to evaluate “how the Wi-Fi delivered BIAS stacks up against the goals of promoting innovation and broadband investment.”¹¹ Telrite respectfully submits that its offering provides consumers with a compelling alternative to traditional licensed, cellular mobile BIAS that demonstrates the importance and value of the 12-month benefit port freeze.

At the outset, it's important to note that Telrite's basic plan includes 500 minutes of cellular voice service, which in itself meets the Commission's voice minimum service standards.

⁹ Chairman Pai recently emphasized the importance of promoting permissionless innovation and consumer choice. *See* Testimony of Chairman Ajit Pai Before the Senate Commerce, Science, and Transportation Committee, “Oversight of the Federal Communications Commission”, 3 (Mar. 8, 2017) (Pai Testimony) (“I firmly believe the Commission should favor permissionless innovation in this fiercely competitive market—and rely on consumer choice to sort out what innovations best serve the public interest.”).

¹⁰ *See* 2015 Open Internet Order ¶ 340.

¹¹ *See* PUD Comments at 7.

In addition to meeting the minimum standard for voice service, Telrite *also* offers all subscribers unlimited text messaging, 25 MMS messages, and a smartphone (either as a new enrollee or for legacy subscribers as a free device upgrade). Most importantly, Telrite offers subscribers both 3G-or-better cellular data and an unlimited Premium Wi-Fi offering with last-mile VPN functionality. Telrite’s offering is the only mobile broadband plan in the Lifeline program today of which Telrite is aware that offers subscribers unlimited data with better-than-3G speeds at no cost to the consumer. The value of this innovative offering exceeds comparable offerings, and demonstrates that the 12-month benefit port freeze is working as intended. Indeed, without the 12-month benefit port freeze, it would be impossible to provide a bundle with this level of value at no cost to the consumer.

In this way, Telrite’s offerings fully accomplish the goals of Lifeline Modernization Order in adopting the 12-month benefit port freeze. Further, if the Commission were to prematurely prohibit BIAS offerings like Telrite’s Premium Wi-Fi service and limit consumers’ ability to choose Lifeline offerings based on their own needs (rather than Commission diktat), it would undermine Chairman Pai’s call for “permissionless innovation” that “rel[ies] on consumer choice to sort out what innovations best serve the public interest.”¹² The Commission should “facilitate, not frustrate, innovation” in the Lifeline market, and not allow bureaucracy to prevent innovation aimed at closing the digital divide.¹³

¹² See Pai Testimony at 3.

¹³ See *id.* at 2.

III. TRANSPARENCY IS IMPORTANT TO ENABLE CONSUMERS TO MAKE INFORMED DECISIONS ABOUT THEIR BROADBAND SERVICE, AND THE COMMISSION’S TRANSPARENCY RULE ALREADY PROVIDES A SUFFICIENT FOUNDATION TO ACHIEVE THAT GOAL

The PUD also argues that “consumers must be made aware of any differences between Wi-Fi delivered BIAS and BIAS provided in conjunction with cellular data” in a manner that is “clear, detailed, and understandable for all consumers.”¹⁴

Telrite agrees that consumers deserve sufficient information to enable them to make an informed choice about their broadband service. Indeed, the Commission’s open Internet transparency rule already requires BIAS providers to post a public statement describing relevant information about the service.¹⁵ No new requirement is needed. Further, Telrite has been transparent with its consumers. Before launching its Premium Wi-Fi service, Telrite provided a notice to all subscribers describing Premium Wi-Fi service and how it differed from cellular data. Specifically, the notice stated:

Your broadband service may be provided via premium Wi-Fi, which provides broadband through a network of millions of Wi-Fi hotspots throughout the country in a manner similar to, but different from, cellular data service. These hotspots are connected via a secure virtual public network (VPN) to traditional broadband service. *While Premium Wi-Fi service is designed to deliver faster than 3G data speeds, geographic coverage may be more limited than traditional cellular data systems. Premium Wi-Fi speeds will depend on a variety of physical, technical, and environmental factors.* If you would like to purchase additional cellular data, you may purchase top-ups at <https://www.lifewireless.com/main/buypins>. To learn more about your Premium Wi-Fi service, to test your Premium Wi-Fi speed, or to find available hotspots near you, refer to the iPass app on your phone. For more information on the terms and conditions of Premium Wi-Fi service, continue reading the following section.¹⁶

¹⁴ See PUD Comments at 8.

¹⁵ See 47 C.F.R. § 8.3.

¹⁶ See Life Wireless Customer Notice, available at <https://www.lifewireless.com/main/changes-in-plan> (emphasis added).

Moreover, in its notice, Telrite described in detail that the new plans would be subject to a 12-month benefit port freeze and a 30-day non-usage requirement, and provided subscribers with options that they could select if they didn't want their benefit to apply to this new plan.¹⁷ Telrite provided consumers with this notice and ample time to switch plans or providers.

Finally, even if a subscriber later learns that Telrite's Premium Wi-Fi service does not function well in their area, they always have the option of switching to a voice-only plan and switching to another provider after 60 days. Ultimately, Telrite would rather have subscribers that choose and enjoy their plans rather than ones who believe they have been forced into a plan that is not useful to them. Unfortunately, at this time, the manner in which the Universal Service Administrative Company (USAC) has implemented the port freeze does not allow ETCs to release subscribers except by taking advantage of the exceptions, and as a result permitting the subscriber to switch to voice-only service is the next best option.

CONCLUSION

Telrite appreciates the PUD's comments and willingness to reserve judgment on Telrite's Premium Wi-Fi. In these reply comments, Telrite addresses the issues raised by the PUD by explaining in further detail the technical characteristics, functionality and value of its broadband offering for low-income consumers, as well as the steps that Telrite has taken to notify its subscribers about its innovative mobile BIAS offering and the 12-month benefit port freeze.

¹⁷ *See id.* ("If you do not want your Lifeline benefit to apply to this new plan, you have other options. First, you may select another broadband plan, which may include an additional monthly charge. Second, you may select a voice-only plan, and will be subjected to a 60 day port freeze. For more information, call 611 from your Life Wireless mobile device.").

All together, these facts further support Telrite's position that its Premium Wi-Fi service is mobile BIAS that qualifies for the 12-month benefit port freeze.

By:



John J. Heitmann
Jameson J. Dempsey
KELLEY DRYE & WARREN LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8544 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

Counsel for Telrite Corporation d/b/a Life Wireless

March 9, 2017

Exhibit C

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
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**COMMENTS OF TELRITE CORPORATION D/B/A LIFE WIRELESS IN RESPONSE
TO TRACFONE’S REQUEST FOR CLARIFICATION**

John J. Heitmann
Jameson J. Dempsey
KELLEY DRYE & WARREN LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8544 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

*Counsel for Telrite Corporation d/b/a Life
Wireless*

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**COMMENTS OF TELRITE CORPORATION D/B/A LIFE WIRELESS IN RESPONSE
TO TRACFONE’S REQUEST FOR CLARIFICATION**

Telrite Corporation d/b/a Life Wireless (Telrite or the Company), by and through the undersigned counsel, respectfully submits these comments in response to the Commission’s request for comment on TracFone’s request for clarification.¹

INTRODUCTION & SUMMARY

In these comments, Telrite addresses two separate issues that TracFone raised in its request for clarification.² First, Telrite agrees that, in order for the 12-month benefit port freeze to apply, subscribers receiving mobile BIAS offerings should have devices capable of handling such service. In the context of today’s Lifeline program, those devices should be capable of

¹ *See Wireline Competition Bureau Seeks Comment on TracFone Request for Clarification*, Public Notice, WC Docket No. 11-42 (rel. Feb. 16, 2017); *see also* Letter from Mitchell F. Brecher, Greenberg Traurig, LLP to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 18, 2017) (TracFone Request); Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al. (filed Jan. 19, 2017).

² While the Commission only placed TracFone’s request for clarification on Public Notice, Sprint Corporation (Sprint) also submitted a letter with distinct but related requests. *See* Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary Federal Communications Commission, WC Docket No. 11-42 et al. (filed Jan. 19, 2017) (Sprint Request). In these comments, we address the issues that each party raised in its letters.

handling data at 3G or better speeds.³ Telrite provides all of its customers with 3G-or-better SIM cards and handsets, and enables consumers to bring their own 3G-or-better devices to use with Telrite's Lifeline service offerings.⁴

Second, Telrite provides its Lifeline subscribers with a variety of products that meet or exceed the Lifeline Modernization Order's minimum service standards, including plans that offer cellular data as well as plans that offer unlimited Premium Wi-Fi service. Telrite does not rely on free public Wi-Fi to meet these standards. Instead, Telrite's Premium Wi-Fi service offering provides secure VPN access to iPass's private network of 34 million access points,⁵ which include private home and commercial access points.⁶ Telrite's unlimited Premium Wi-Fi offering provides consumers with a compelling alternative to the cellular-data-centric plans offered by most Lifeline eligible telecommunications carriers (ETCs) today, promoting consumer choice and product differentiation in the Lifeline market.

³ Contrary to TracFone's claim, 3G is the governing speed threshold for mobile BIAS in the Lifeline program. *See* 47 C.F.R. § 54.408(b)(2). TracFone's request for clarification on this issue is really a request for a rule change. *See* Letter from Mitchell F. Brecher, Greenberg Traurig, LLP to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., Enclosure at 1 (filed Feb. 14, 2017) (TracFone WCB/TAPD Letter).

⁴ TracFone's assertion that these devices must be "smartphones" is yet another claim without basis in the current Lifeline program rules. *See* TracFone Request at 2-3. Once again, TracFone is requesting a new rule, rather than clarification of an existing one.

⁵ Telrite provides this service through the resale of iPass's network. TracFone's suggestion that mobile BIAS cannot be provided through the resale of underlying provider networks would render its business model untenable. *See* TracFone WCB/TAPD Letter, Enclosure at 1 (asserting that BIAS "provided by others" cannot count as BIAS). Once again, nothing in today's Lifeline rules supports or can be "clarified" to support TracFone's assertion.

⁶ Sprint's assertion that mobile BIAS must "provide service in locations (such as a Lifeline customer's home) that otherwise lack[] broadband access" is not only unsupported by today's Lifeline program rules, it makes no sense for a program focused on making available affordable broadband access. *See* Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary Federal Communications Commission, WC Docket No. 11-42 et al. at 1 (filed Feb. 15, 2017) (Sprint WCB Letter).

The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider's own cellular data network.⁷ Indeed, the definition of mobile BIAS does not exclude innovative services that utilize unlicensed spectrum, and the Commission should reject calls to rewrite the rules in a manner that would limit mobile BIAS to cellular data service.⁸ As non-Lifeline customers do, Lifeline-eligible subscribers should be able to choose Wi-Fi-enabled mobile broadband service and other innovative service offerings from cable companies and others, or choose more familiar all-cellular offerings. Fortunately, today's Lifeline program rules allow them to do just that. Because these plans offer BIAS that meet the Commission's minimum service standards, they qualify for the 12-month benefit port freeze.

The Commission should decline any requests for "clarification" that would rewrite these rules so as to preclude access to the kinds of innovative and robust service offerings the Commission had hoped to spur through expansion of the port freeze to mobile BIAS offerings.

⁷ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶¶ 49 & n.132, 373 (rel. Apr. 27, 2016) (Lifeline Modernization Order or the Order). Sprint's proposed standard would render TracFone and every other major Lifeline service provider reliant on resale unable to provide such service. See Sprint WCB Letter at 1.

⁸ Telrite is not asking the Commission to classify Wi-Fi—i.e., IEEE 802.11 wireless local area networks—as BIAS, nor is it asking for the Commission to classify fixed BIAS accessed through a single Wi-Fi access point (or a limited number of access points) as mobile BIAS or functionally mobile BIAS under the Commission's open Internet rules. Rather, the Commission need only declare that Telrite's Premium Wi-Fi service—a retail, mass-market offering that provides mobility through a network of millions of resold BIAS access points and specialized technology that automatically connects to the strongest access point without user interaction—qualifies as BIAS as defined in Section 54.400(l) of the Commission's rules and constitutes mobile BIAS under the Lifeline Modernization Order that counts toward the applicable Lifeline broadband minimum service standard. Alternatively, the Commission should declare that Telrite's entire broadband service offering, which encompasses a hybrid of licensed cellular and unlicensed Premium Wi-Fi in a Wi-Fi-First model, constitutes BIAS under the Lifeline Modernization Order and the Commission's Lifeline rules.

Indeed, this proceeding demonstrates that the 12-month benefit port freeze is working as intended, permitting access to smartphones and innovative service offerings that are affordable for low-income consumers and help to close the digital divide.

I. TELRITE OFFERS CONSUMERS A VARIETY OF AFFORDABLE AND COMPETITIVE SERVICE OFFERINGS

Telrite provides its Lifeline subscribers with a variety of products that meet or exceed the Lifeline Modernization Order’s minimum service standards, including plans that offer cellular data and unlimited Premium Wi-Fi service:

Customer	DEVICE*	COST	TALK	TEXT	DATA	MMS
Legacy feature phone subscribers	3G-capable handset with Internet browser**	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 500 MB Cellular	25
Legacy smartphone subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
New subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
Tribal (OK)	Smartphone	FREE	Unlimited	Unlimited	Unlimited Premium Wi-Fi + 1 GB Cellular	100

*Since 2014, all subscriptions have come with a 4G SIM card. Previously, all SIM cards were 3G capable

**Free upgrade to smartphone available after 180 days of service

Telrite’s offerings include plans with 500 MB or more of cellular data, as well as plans with unlimited access to broadband via Premium Wi-Fi through the resale of iPass’s nationwide network of over 34 million broadband access points. Non-tribal plans feature 500 minutes of voice service,⁹ unlimited text messages, and broadband data that includes both unlimited access

⁹ As a result, even if the Commission rules that Premium Wi-Fi does not qualify for the mobile BIAS minimum service standard, Telrite’s plans meet the minimum standard for voice service and therefore qualify for federal Lifeline subsidies.

to iPass's broadband data network (and a last-mile virtual private network (VPN)) and an allotment of cellular data, depending on their device and legacy status—i.e., 500 MB of cellular data for legacy feature phone subscribers and 10 MB of cellular data for all new and smartphone subscribers.¹⁰ Tribal customers receive unlimited talk and text, and broadband data that includes both unlimited Premium Wi-Fi and 1 GB of cellular data each month. In states with enhanced state subsidies, subscribers receive plans with even more data and voice minutes. For example, in California all new subscribers receive unlimited talk and text, 100 MMS messages, and a data plan with 500 MB of cellular data and unlimited Premium Wi-Fi. Notably, all Telrite plans meet the minimum service standard for voice as well as broadband. Because the smartphones Telrite distributes are Wi-Fi enabled, customers also have unlimited access to typically free public, home and community anchor institution Wi-Fi networks. Further, because Telrite's smartphones are hotspot capable, subscribers can connect other devices—such as tablets and laptops—to BIAS through their handset, further enhancing the value of their service. These plans demonstrate that Telrite is laser-focused on achieving the Commission's goals of closing the digital divide¹¹ and connecting low-income Americans to jobs, education, government services, family and community.

Telrite's broadband plans include two forms of BIAS—cellular data and Premium Wi-Fi—and meet the letter and spirit of the Lifeline Modernization Order. Telrite's Premium Wi-Fi provides the mobility of traditional cellular BIAS (i.e., the ability to move between hotspots

¹⁰ This differentiation recognizes both the loyalty of the existing subscriber base and the fact that feature phones may not have the ability to download or utilize the iPass app. However, a legacy feature phone subscriber may upgrade to a smartphone at any time, which will enable them to use both 500 MB of cellular data and unlimited iPass each month.

¹¹ See Remarks of Chairman Ajit Pai, Federal Communications Commission (Jan. 24, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

without user interaction) and speeds that exceed the Commission's mobile (3G) minimum speed standards and are backed by fixed networks with speeds as good as or better than traditional fixed BIAS. Because it provides unlimited broadband each month, Telrite's Premium Wi-Fi service meets the Commission's 500 MB mobile BIAS minimum monthly data quantity standards.¹² Telrite's basic broadband offering for new subscribers also provides 10 MB of cellular data at no cost to the consumer, and the ability to purchase additional cellular data at competitive rates.¹³ To enhance security, Telrite's Premium Wi-Fi service transits over a last-mile VPN, which Telrite provides to its customers free of charge. In total, the basic broadband plan featuring unlimited Telrite's Premium Wi-Fi service offers consumers a \$34 value, free of charge, every month.

Telrite's handsets also meet the letter and spirit of the Lifeline Modernization Order. All new Telrite subscribers receive an Android smartphone free of charge upon enrollment, and Telrite offers subscribers who have been active for 180 days a free one-time upgrade to a smartphone. Subscribers who are not eligible for the smartphone upgrade may purchase a smartphone for as little as \$35. At this point, any subscriber with a 3G non-smartphone has had the opportunity to obtain a replacement smartphone for free. As a result, today over 70 percent of Telrite subscribers have smartphones, and that number is increasing rapidly as consumers continue to transition to smartphones. Further, since 2014, all Telrite subscribers have received at least a 4G-capable SIM card that can be used with any 3G-or-better device. Telrite's 3G-capable devices (including non-smartphones) contain a web browser and email functionality that

¹² Because it provides unlimited data, Telrite's Premium Wi-Fi offering also exceeds the Commission's 150 GB fixed BIAS minimum service standard.

¹³ Consumers can purchase additional access to cellular data at affordable rates and at increments as low as \$9.95 for 400 MB.

enables users to transmit data to and receive data from all or substantially all Internet endpoints.¹⁴

These plans and devices are made possible because the 12-month benefit port freeze has helped to curb abusive “flipping”¹⁵ and to incentivize additional investment in innovative services, such as Premium Wi-Fi. Indeed, based on TracFone’s letter¹⁶ and Telrite’s experience, the benefit port freeze appears to be working: it is spurring innovative BIAS offerings and more bang for the federal buck, providing a velocity check on abusive practices, and driving smartphone distribution among Lifeline eligible low-income consumers.

II. A SMARTPHONE IS NOT REQUIRED FOR A MOBILE BIAS PLAN QUALIFYING FOR THE 12-MONTH BENEFIT PORT FREEZE

In its letter, TracFone seeks clarification that Lifeline service provided to consumers using feature phones does not enable Lifeline subscribers to utilize BIAS, as that term is defined in the Commission’s rules.¹⁷ TracFone asserts that only a smartphone can provide access to mobile BIAS. Sprint seeks clarification on the issue of “whether service providers may classify a subscriber as a Lifeline broadband customer if the device they have provided cannot handle 3G speeds.”¹⁸ Telrite submits that no clarification is needed. The Lifeline Modernization Order is already clear: when a device is provided with a Lifeline mobile broadband service, it need not be a smartphone, but the subscriber must receive the capability to access mobile data at 3G speeds

¹⁴ Prior to 2014, Telrite distributed 3G-capable SIM cards.

¹⁵ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Respondents’ Opposition to Petitions for Reconsideration, 3-6 (filed July 29, 2016) (citing comments and ex parte letters referencing the 12-month benefit port freeze).

¹⁶ See TracFone Request at 1.

¹⁷ See *id.* at 3.

¹⁸ See Sprint Request at 2.

to meet the mobile broadband minimum service standard.¹⁹ For example, a consumer may receive a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone, each of which provides the capability to access BIAS. Further, Lifeline providers may claim the 12-month benefit port freeze so long as they provide a service that meets the applicable minimum service standards, irrespective of whether they provide a smartphone, a mobile hotspot or any other device.²⁰

First, it bears noting that the definition of BIAS in the Lifeline context does not dictate particular kinds of devices used to access BIAS, whether fixed or mobile.²¹ In particular, the definition of mobile BIAS does not include a smartphone requirement. BIAS is a “mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”²² Further, while mobile BIAS “serves end users primarily using mobile stations,” the definition of “mobile station” is broad, encompassing any “radio-communication station capable of being moved and which ordinarily does move.”²³ This definition is not limited to smartphones; indeed, the Commission in the 2015 Open Internet Order notes that mobile BIAS “*also includes* services that use smartphones or mobile-network-enabled tablets as the primary

¹⁹ See 47 C.F.R. § 54.408(b)(2)(i); Lifeline Modernization Order ¶ 96.

²⁰ The Commission’s rules do not require carriers to provide a device to Lifeline subscribers; like other, non-low-income subscribers, they may bring their own.

²¹ 47 C.F.R. § 54.400(1).

²² *Id.*

²³ See 47 C.F.R. § 8.2(e); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 188, n. 460 (rel. Mar. 12, 2015) (2015 Open Internet Order).

endpoints for connection to the Internet, as well as mobile satellite broadband services.”²⁴ These passages demonstrate that the Commission did not intend to limit mobile BIAS to services provisioned in connection with a smartphone, but rather that mobile BIAS may be accessed through a number of means, including but not limited to smartphones and tablets.

Second, the Lifeline Modernization Order does not require Lifeline providers to provide a smartphone in order to receive a subsidy or qualify for the 12-month benefit port freeze. Not only did the Lifeline Modernization Order reject calls to subsidize handsets,²⁵ neither the rules nor the Lifeline Modernization Order require the provision of a handset at all, let alone a smartphone. Instead, the rules only require that in order to receive Lifeline reimbursement, an ETC must meet the applicable minimum service standards, and that on a going forward basis, if a provider provides a device to the customer, it must be Wi-Fi enabled.²⁶ This approach is reasonable. If the mobile BIAS Lifeline rules required ETCs to provide a smartphone in order to meet the mobile BIAS minimum service standards, then the fixed BIAS Lifeline rules would similarly implicitly require providers to provide eligible consumers with a laptop computer, desktop computer, or smartphone to meet the fixed BIAS minimum service standards. Neither the rules nor the Lifeline Modernization Order support such an implicit reading.

Third, focusing on the particular handset ignores technical and practical realities. Specifically, on GSM networks, like the network over which Telrite provides cellular data, the operative piece of equipment is the user’s SIM card, which is tied to the user’s account and enables voice and broadband service. The SIM card is the only piece of equipment required in

²⁴ *See id.* (emphasis added).

²⁵ *See* Lifeline Modernization Order ¶ 125.

²⁶ *See id.* ¶ 376; 47 C.F.R. § 54.408(f)(1).

order for the user to establish an account. With respect to the handset, the subscriber has a choice at enrollment: obtain a handset from the provider, purchase a compatible handset from Telrite or a third-party, or use a previously purchased compatible handset (“bring your own device”—BYOD). Subscribers may change their handset at any time, connecting a smartphone on one day and popping the SIM card into a 3G-capable feature phone device on the next, without the provider’s knowledge or permission. This is a good thing. It promotes consumer choice and handset innovation, and enables subscribers to use the device with which they are most comfortable. For some users, their device of choice may be a smartphone, while for others—particularly the elderly—their device of choice may be a 3G-capable non-smartphone. All along, however, the SIM card remains the same, and establishes the upper-bound of the service plan’s BIAS capability. In Telrite’s case, since 2014 it has been providing consumers with 4G-capable SIM cards, and before then all of its SIM cards were 3G-capable. Consequently, all Telrite subscribers have the capability to access BIAS with 3G or better speeds. As such, if the Commission decides to establish an implicit equipment requirement—which Telrite submits is unnecessary—it should judge compliance with the rules in the GSM context based on the capabilities of the underlying SIM card, which the provider controls, rather than the device connected to the SIM card, which the provider may not control.

Fourth, 3G-capable feature phones, including those that Telrite previously provided to its subscribers and that some subscribers continue to use, can and do provide access to BIAS. Telrite’s 3G-capable feature phone devices provide users with on-device browsers that enable users to transmit data to and receive data from all or substantially all Internet endpoints in a manner that meets the definition of BIAS under 47 C.F.R. § 54.400(l). In Telrite’s case, its 3G feature phone handsets provide the capability of broadband access at 3G or better speeds and

have built-in web browsers, and many have full QWERTY keyboards and can download specialized social media applications (e.g., Twitter). As such, it is false to say that Lifeline subscribers with feature phones “are not able” to transmit data to and receive data from all or substantially all Internet endpoints.

While it is clear that the Lifeline Modernization Order did not condition application of the 12-month benefit port freeze for BIAS plans on distribution of a smartphone, Telrite acknowledges that the distribution of smartphones and investment in innovative service plans was a primary justification for extending the port freeze requirement to broadband.²⁷ As explained in section I above, Telrite is offering smartphones to all new customers, as well as to existing customers. It is offering plans that meet or exceed the minimum service standards for BIAS. In short, Telrite not only has met the letter and spirit of the new regulatory requirements, it has gone above and beyond to ensure that Lifeline-eligible consumers have access to innovative plans, services and devices that include plans that offer more broadband than a monthly tranche of 500 MB of cellular data.

Although the Lifeline Modernization Order requires no clarification on whether a smartphone is a prerequisite for access to mobile BIAS (it is not), if the Commission determines a declaration is necessary, it should declare that if a provider offers a device with its Lifeline-supported broadband service, the provider need not provide consumers with a smartphone in order to seek reimbursement or avail itself of the 12-month benefit port freeze, so long as the underlying service and device enables access to BIAS at 3G or better speeds (e.g., through a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone). TracFone’s

²⁷ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 et al., Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, 17 (Aug. 31, 2015).

request for clarification is really a request for a new rule that is neither found in the Lifeline Modernization Order nor subject to a petition for reconsideration. As such, the Commission should reject TracFone's request for clarification.

III. TELRITE PROVIDES ITS LIFELINE SUBSCRIBERS WITH A VARIETY OF PRODUCTS THAT MEET OR EXCEED THE LIFELINE MODERNIZATION ORDER'S MINIMUM SERVICE STANDARDS AND QUALIFY FOR THE 12-MONTH BENEFIT PORT FREEZE

Contrary to Sprint's and TracFone's claims,²⁸ Telrite's Premium Wi-Fi service is BIAS that qualifies for the 12-month benefit port freeze. Moreover, Telrite's broadband offerings advance the Commission's goals of consumer choice and innovation by providing an alternative to traditional cellular data service through secure, nationwide connectivity using unlicensed spectrum.

A. Telrite's Offerings Meet the Commission's Lifeline Minimum Service Standards

In their respective letters, TracFone and Sprint submit that Wi-Fi does not meet the Lifeline broadband minimum service standard, and seek clarification from the Commission.²⁹ Specifically, TracFone asks the Commission to clarify that "broadband access through Wi-Fi does not meet the 500 MB minimum standard" and Sprint asks "the FCC to clarify whether a Lifeline ETC that offers less than 500 MB of primary (non-Wi-Fi) data is or is not meeting the minimum service standard," arguing that "Wi-Fi access in any form does not count toward meeting the minimum mobile broadband service requirement."³⁰ In subsequent letters, TracFone

²⁸ See TracFone Request and Sprint Request.

²⁹ See Sprint WCB Letter at 2. In the Lifeline Modernization Order, the Commission includes BIAS as a supported service. See Lifeline Modernization Order ¶ 39.

³⁰ See TracFone Request at 3; Sprint WCB Letter at 2.

takes its advocacy one step further, arguing that “3G is not BIAS” and that “Internet access provided by others” does not count as broadband (a de facto facilities-based requirement which TracFone cannot meet),³¹ curiously echoing Sprint’s argument that wireless ETCs must provide service over their “own cellular data network” (which TracFone does not have) to qualify for the 12-month benefit port freeze.³²

Telrite respectfully submits that its provision of broadband via Premium Wi-Fi indeed qualifies as BIAS. However, for the purposes of ensuring a level-playing field and encouraging an innovative and technology neutral Lifeline program, Telrite also submits that the Commission should declare that its Premium-Wi-Fi service meets the definition of mobile BIAS and may be used to meet the broadband minimum service standards.³³

1. Telrite’s Premium Wi-Fi Service Is BIAS

As a threshold matter, Telrite’s Premium-Wi-Fi service is BIAS. The Commission defines BIAS, for purposes of Lifeline, as “[a] mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”³⁴ Telrite’s Premium Wi-Fi service is a mass-market retail service that enables a consumer to access a network of BIAS connections—including but not limited to those of cable broadband providers—over Wi-Fi

³¹ See TracFone WCB/TAPD Letter, Enclosure at 1.

³² See Sprint WCB Letter at 1.

³³ As described above, the broadband Premium Wi-Fi Telrite resells and incorporates into its Lifeline service offerings is distinguishable from free public Wi-Fi. The service has a market value of \$25 and it provides access through a secure VPN connection (an additional \$9 value) to a vast nationwide network of Wi-Fi broadband access points, similar to the manner in which cellular data service provides secure access to a nationwide network of cellular access points.

³⁴ See 47 C.F.R. 54.400(l).

through an application on the user’s smartphone. Unlike services that merely aggregate open Wi-Fi networks, Telrite’s Premium Wi-Fi service relies on negotiated arrangements between the underlying Premium Wi-Fi provider and the underlying broadband providers. As stated above, Telrite resells the network of iPass, which currently provides access to over 34 million broadband access points throughout the United States, and more globally, providing a dense network that users can access at home or on the go. Telrite’s Premium Wi-Fi service also includes several features that distinguish it from traditional public Wi-Fi networks. These services include a secure connection through a last-mile VPN; a seamless experience that enables automatic connection to the strongest broadband signal in the area; and an app with speed test and hotspot finder functionality. In this way, Telrite’s Premium Wi-Fi service provides an experience with mobility like cellular BIAS and speeds that meet or exceed those of fixed BIAS.³⁵

2. Telrite’s Premium Wi-Fi Service Is Mobile BIAS, Which Is Not Limited to Licensed, Cellular Data

Telrite’s Premium Wi-Fi service also meets the definition of mobile BIAS. While the Lifeline Modernization Order does not define mobile BIAS, in the Open Internet context, the Commission defined mobile BIAS as BIAS “that serves end users primarily using mobile stations.” Under the Commission’s rules, a mobile station is “a station in the mobile service intended to be used while in motion or during halts at unspecified points” (as opposed to a “land

³⁵ If the Commission determines that Telrite’s Premium Wi-Fi service is not mobile BIAS, the service may still be considered fixed BIAS. Specifically, while Premium Wi-Fi uses smartphones and mobile-network-enabled tablets as the primary endpoints for connection to the Internet, meeting the definition of mobile BIAS, it also enables connectivity in a manner similar to fixed BIAS connections.

station,” which is not intended to be used while in motion).³⁶ The “mobile service” is “[a] radiocommunication service between mobile and land stations, or between mobile stations.”³⁷

Importantly, there is no support in the Lifeline Modernization Order or the Commission’s rules for TracFone and Sprint’s contention that mobile BIAS is limited to licensed, cellular data connections. First, the definition of mobile BIAS, by its terms, is not limited to cellular BIAS. Indeed, the Commission has noted that mobile BIAS “*also includes* services” such as mobile satellite services “that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet.”³⁸ Telrite’s Premium Wi-Fi service also meets this description.

Second, the Lifeline Modernization Order does not limit mobile BIAS to licensed, cellular data. Instead, the Commission expressly calls for providers to offer innovative broadband solutions to help close the digital divide.³⁹ Such an expansive definition of mobile BIAS makes sense. The mobile industry is fast-moving and innovative, and is increasingly looking to unlicensed (Wi-Fi, LTE-U) and hybrid licensed-unlicensed services (Wi-Fi First, 5G) to meet the skyrocketing demand of consumers.⁴⁰ Indeed, as GSMA has explained, one of the leading visions for 5G mobile data “would create a blend of pre-existing technologies covering

³⁶ A “station” is “[o]ne or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service.” 47 C.F.R. § 2.1(c). A radiocommunication service is “[a] service . . . involving the transmission, emission and/or reception of radio waves for specific telecommunication purposes.” *Id.*

³⁷ *Id.*

³⁸ See 2015 Open Internet Order ¶ 188 (emphasis added).

³⁹ See Lifeline Modernization Order ¶ 373.

⁴⁰ See, e.g., Dave Fraser, “Hybrid Wi-Fi-Cellular Service Is the Future” (July 26, 2016), available at <http://www.multichannel.com/blog/mcn-guest-blog/hybrid-wifi-cellular-service-future/406645> (“Well executed hybrids are the future of the industry.”).

2G, 3G, 4G, Wi-fi and others to allow higher coverage and availability, and higher network density in terms of cells and devices.”⁴¹ If the Commission were to limit support for mobile BIAS to licensed or cellular data connections, it would effectively foreclose those innovative and popular service offerings that it expressly seeks to promote.

Here, Telrite’s Premium Wi-Fi service meets the definition of mobile BIAS because it is BIAS that serves end users using smartphones in the mobile service that are intended to be used while in motion or “during halts at unspecified points” through automatic connections between a nationwide network of hotspots.⁴² Unlike fixed services, Telrite’s Premium Wi-Fi service relies on a network of access points and enables the subscriber to travel between those connections using a mobile device. Therefore, Telrite’s Premium Wi-Fi service is mobile BIAS for purposes of the Lifeline rules that counts toward the minimum service standards and justifies applying the 12-month benefit port freeze.

3. Telrite’s Premium W-Fi Service Meets the Commission’s Minimum Service Standards

In addition to meeting the definition of mobile BIAS, Telrite’s Premium Wi-Fi service meets the applicable mobile broadband minimum service standards. As such, it qualifies for the 12-month benefit port freeze.

To meet the minimum service standards, mobile BIAS must advertise “3G or higher” speed service.⁴³ Specifically, the rule states that the “minimum service standard for mobile

⁴¹ See GSMA Intelligence, *Understanding 5G: Perspectives on future technological advancements in mobile*, at 6 (Dec. 2014).

⁴² Alternatively, Telrite’s entire broadband offering should be considered as a single offering (Premium Wi-Fi and cellular data). Where there are gaps in Premium Wi-Fi service, the service automatically falls back to cellular data, providing seamless coverage while on the go that meets the definition of mobile BIAS.

⁴³ See Lifeline Modernization Order ¶¶ 96, 105.

broadband speed will be 3G.”⁴⁴ The Lifeline Modernization Order explains that the mobile BIAS minimum speed standard is “based on technology generation” and requires a service “advertising at least 3G mobile technology,” citing the Mobility Fund as a reference point.⁴⁵ Contrary to TracFone’s and Sprint’s claims, the minimum speed standard is not meant to require a specific cellular or “primary” broadband delivery technology, but rather to serve as a proxy for the speed of service.

First, the minimum service standard itself is described as a speed standard, not a technology standard. The rule itself states that the “minimum service standard for mobile broadband *speed* will be 3G.” While the rule could have prescribed a minimum “network technology” standard or “infrastructure” standard, as it did in the Mobility Fund context,⁴⁶ it did not do so here. To be sure, the Order states that the rule is “based on technology generation” and requires a service “advertising at least 3G mobile technology,” but basing a speed standard on a particular technology and requiring the particular technology are different things, and there is no indication in the Order that the Commission intended to impose a technology requirement.⁴⁷

In other contexts, the Commission has separately defined 3G network infrastructure and 3G speeds. Specifically, in the 2011 USF/ICC Transformation Order, which established the Mobility Fund, the Commission required fund recipients to deploy 3G or better networks, but

⁴⁴ See 47 C.F.R. § 54.408(b)(2)(i) (emphasis added).

⁴⁵ See Lifeline Modernization Order ¶ 96.

⁴⁶ See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 361-62 (rel. Nov. 18, 2011)(2011 USF/ICC Transformation Order) (requiring fund recipients to deploy a “3G or better network,” and separately establishing speed requirements for such networks).

⁴⁷ To the extent that the Commission describes “mobile technology generation” using the phrase “i.e., 3G, 4G,” that phrase is best understood as non-exclusive, otherwise it could be read to exclude variants of 4G (e.g., 4G/LTE, LTE-A), 5G, mobile satellite services, and other mobile BIAS technologies. See Lifeline Modernization Order ¶ 92.

only provided support to 3G networks that “me[t] or exceed[ed] an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices.”⁴⁸ As such, a requirement of 3G networks is conceptually different from requiring 3G speeds. Here, where the Commission’s Lifeline rules require speeds of “3G or higher,” it similarly uses the term as a proxy for speeds capable on 3G networks, not 3G cellular infrastructure.

Second, even if the Commission did intend to establish a “mobile technology” standard, the Order does not limit mobile technology to licensed, cellular technologies. The omission of a specific cellular requirement in the Lifeline Modernization Order contrasts with the Mobility Fund, where the Commission required funding recipients to hold spectrum and deploy 3G cellular networks.⁴⁹ The Lifeline Modernization Order contains no spectrum or cellular requirement, and cannot reasonably be read to impose one. Indeed, if the Commission were to require 3G cellular networks in the Lifeline context, it would effectively prohibit mobile satellite services from qualifying for Lifeline support, despite the fact that the Commission has recognized such satellite services as mobile BIAS and the fact that in remote areas lacking cellular coverage those services may be the only option for consumers.

Third, even if the Commission did intend to require a minimum standard of 3G cellular technology, the fact that the Commission established a standard of “at least” 3G “or better” indicates that faster technologies, such as Premium Wi-Fi, could meet the standard. In the case of Telrite’s Premium Wi-Fi service, a nationwide network of millions of Wi-Fi hotspots (and growing) represents a faster and more advanced technological approach to mobile connectivity than 3G cellular technologies. As such, as a matter of technology generations, Telrite’s Premium

⁴⁸ *See id.*

⁴⁹ *See id.* ¶ 362.

Wi-Fi service meets the definition of “3G or better” service because the speed offered makes it “better.”

Fourth, contrary to Sprint’s assertions, no support can be found in the Lifeline Modernization Order or the new Lifeline rules that broadband data must be carried over the “ETC’s own cellular network” to qualify for reimbursement. Indeed, the Commission has long permitted carriers to receive broadband support through the resale of another carrier’s network, and it does not disturb this finding in the Lifeline Modernization Order.⁵⁰ Moreover, the Lifeline Modernization Order actively encourages providers to offer “new, innovative products and services” that “push the envelope in search of better ways to delivery broadband to . . . subscribers.”⁵¹ For that reason, any BIAS offering is eligible for monthly Lifeline reimbursement so long as the provider meets the Commission’s speed and quantity minimum service standards.

Here, Telrite’s broadband plans featuring unlimited broadband via Premium Wi-Fi comply with the applicable broadband quantity minimum service standards. Telrite provides⁵² consumers with *unlimited* Premium Wi-Fi each month at no cost, far exceeding the Commission’s 500 MB mobile minimum service standard and the 150 GB fixed broadband minimum service standard. Further, when subscribers use Premium Wi-Fi, they achieve speeds that exceed the mobile BIAS minimum service standards and include performance characteristics that meet or exceed traditional fixed BIAS speeds. Because this offering meets the

⁵⁰ See Lifeline Modernization Order ¶¶ 45, 242 (citations omitted).

⁵¹ See *id.* ¶ 373.

⁵² Importantly, when Telrite resells Premium Wi-Fi to its subscribers, and those subscribers use the service to access the Internet, Telrite is properly considered the “provider” of the Premium Wi-Fi service, in a manner similar to the relationship between a mobile virtual network operator (MVNO) and its underlying mobile network operator (MNO).

Commission’s minimum service standards, it is clear that the service qualifies for the 12-month benefit port freeze. For these reasons, the Commission should declare that Telrite’s Premium Wi-Fi is BIAS that meets the applicable minimum service standards and qualifies for the 12-month benefit port freeze.

B. Telrite’s Broadband Offering Promotes the Lifeline Modernization Order’s Goals of Promoting Consumer Choice and Innovation

Telrite’s broadband offering also advances core public policy goals of the Lifeline Modernization Order, including consumer choice and innovation.

First, Telrite’s broadband offering—including Premium Wi-Fi—promotes consumer choice. Telrite’s broadband service offers consumers both cellular data and an unlimited amount of data on Premium Wi-Fi network connections that are typically faster than traditional 3G cellular data service. For Lifeline subscribers who chose a service provider based on the data component of a bundled service offering, they can in many markets now choose between Telrite’s Premium Wi-Fi service, a unique service with unlimited data and faster speeds, but with more limited coverage, and other ETCs’ more limited and slower 500 MB 3G cellular service offerings that offer more geographically widespread availability. The Commission itself recognized the value of “empower[ing] consumers” to evaluate the various trade-offs and to choose a service that best meets their needs.⁵³ While the Commission there was discussing the choice between fixed and mobile, the same argument applies to choices among fixed and mobile BIAS offerings. Here, non-Lifeline subscribers may choose Wi-Fi-enabled mobile broadband

⁵³ See Lifeline Modernization Order ¶ 50 (“We allow Lifeline subscribers to apply the discount to fixed or mobile standalone broadband offerings. We empower consumers to make this choice. While fixed and mobile broadband services both provide access to online services, there are some key tradeoffs consumers must consider regarding the utility of each service. We recognize these tradeoffs both in terms of technological constraints and how each mode is offered in the market.”).

service and other innovative service offerings from cable companies and others, or they may choose more familiar all-cellular offerings. Lifeline-eligible subscribers should be able to make similar choices based on the plans that are the most affordable and best serve their needs.

Second, Telrite's broadband service promotes the Commission's pro-innovation agenda for Lifeline modernization. The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider's own cellular data network. The future of mobile technology will rely on a combination of licensed and unlicensed technologies, just as Telrite' offers its customers a data offering with both unlimited Premium Wi-Fi and cellular broadband data. A number of mobile providers today offer such hybrid broadband services (e.g., Google Fi and Republic Wireless), and fixed broadband providers are providing their consumers with enhanced mobility through Wi-Fi-powered networks (e.g., Cable Wi-Fi).⁵⁴ Limiting supported broadband services to cellular broadband at this time would be extremely shortsighted, imposing a chilling effect on the industry. Indeed, as hybrid and Wi-Fi first offerings become more prevalent, the inability of low-income Americans to apply Lifeline support to offerings like Telrite's Premium Wi-Fi would further exacerbate the digital divide.

CONCLUSION

Ultimately, this proceeding demonstrates that the Lifeline Modernization Order and the 12-month benefit port freeze are working. The Commission adopted the 12-month benefit port freeze in order to incentivize more stable customer-carrier relationships, to tamp down on wasteful and abusive flipping practices and to promote the deployment of smartphones. As a

⁵⁴ See Craig Leddy, *Taking Flight: Cable's New Routes to Wireless Mobility*, Heavy Reading, http://www.heavyreading.com/details.asp?sku_id=3453&skuitem_itemid=1686.

result of the benefit port freeze, Telrite has been able to provide all new subscribers with a smartphone, and to offer a free upgrade for existing customers to a smartphone after 180 days of service. Today, 71 percent of Telrite subscribers have a smartphone, and that number has been increasing. Further, the 12-month benefit port freeze enables Telrite to offer all subscribers a broadband service with both Premium Wi-Fi and cellular data that meets or exceeds the Commission's minimum service standards. Consumers who are dissatisfied with Telrite's broadband offering always have the option to switch to a voice-only plan, avail themselves of the 60-day benefit port freeze, and switch to a new carrier that better meets their needs.

Further, the fact that TracFone has witnessed a decrease in port-ins from other carriers shows that the 12-month benefit port freeze is an effective velocity check on benefit ports, meaning that carriers like Telrite who provide customers with free smartphones and innovative broadband plans will not become the subject of phone flipping and other pernicious practices that would otherwise render such offerings uneconomical. To foreclose Telrite's innovative service offerings through a petition for rulemaking masked as a request for clarification ironically would undermine the very effects that that Lifeline Modernization Order intended to have, turning back the clock on Lifeline and exacerbating the digital divide.

For these reasons, the Commission should reject TracFone's and Sprint's requests for clarification and instead make findings consistent with these comments.

By:



John J. Heitmann
Jameson J. Dempsey
KELLEY DRYE & WARREN LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8544 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

Counsel for Telrite Corporation d/b/a Life Wireless

March 2, 2017

Exhibit D

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
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AFFILIATE OFFICE
MUMBAI, INDIA

February 24, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Telrite Corporation d/b/a Life Wireless Notice of Oral *Ex Parte***
Presentation; WC Docket Nos. 09-197, 10-90, 11-42

Dear Ms. Dortch:

On February 23 and 24, 2017, Susan Berlin of Telrite Corporation d/b/a Life Wireless (Telrite or the Company) and John Heitmann and Jameson Dempsey of Kelley Drye & Warren LLP met, in separate meetings, with Jay Schwarz, Acting Wireline Advisor to Federal Communications Commission (FCC or Commission) Chairman Ajit Pai; Claude Aiken, Wireline Advisor to Commissioner Mignon Clyburn; and Amy Bender, Wireline Advisor to Commissioner Michael O'Rielly. In the meeting, we discussed issues consistent with the attached summary sheet and the Company's January 27th and February 17th ex parte letters¹ in

¹ See Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 27, 2017); Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 17, 2017).

KELLEY DRYE & WARREN LLP

Marlene Dortch
February 24, 2017
Page Two

response to the recent ex parte letters of TracFone Wireless, Inc.² and Sprint Corporation.³
Pursuant to Section 1.1206(b) of the FCC's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Jameson J. Dempsey
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

*Counsel to Telrite Corporation d/b/a Life
Wireless*

cc: Jay Schwarz
Amy Bender
Claude Aiken

Enclosure

² See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017); Letter from Mitchell Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 14, 2017); Letter from Mitchell Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 14, 2017).

³ See Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 19, 2017); Letter from Norina T. Moy, Director, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 15, 2017).

ENCLOSURE

Telrite Corporation d/b/a Life Wireless
Consumer Choice, Innovation, and the Future of the Lifeline Program

Telrite agrees that consumers receiving mobile BIAS offerings should have devices capable of handling such service. In the context of today's Lifeline program, those devices should be capable of handling data at 3G or better speeds. Telrite provides all of its customers with 3G-or-better SIM cards and handsets, and enables consumers to bring their own 3G-or-better devices to use with Telrite's Lifeline service offerings.

Telrite's plans provide subscribers with a variety of products that meet or exceed the Lifeline Modernization Order's minimum service standards, including plans that offer cellular data and plans that offer unlimited Premium Wi-Fi service. Telrite does not rely on free public Wi-Fi to meet these standards.

Customer	DEVICE*	COST	TALK	TEXT	DATA	MMS
Legacy feature phone subscribers	3G-capable handset with Internet browser**	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 500 MB Cellular	25
Legacy smartphone subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
New subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
Tribal (OK)	Smartphone	FREE	Unlimited	Unlimited	Unlimited Premium Wi-Fi + 1 GB Cellular	100

*Since 2014, all subscriptions have come with a 4G/LTE SIM card. Previously, all SIM cards were 3G capable

**Free upgrade to smartphone available after 180 days of service

What is Telrite's Premium Wi-Fi? Telrite's Premium Wi-Fi is a broadband service—distinguishable from traditional, free, public Wi-Fi—that leverages the nationwide access point network of iPass, a Premium Wi-Fi network operator:

- **Broad coverage:** 34 million broadband access points via Wi-Fi in the US alone, including commercial and residential hotspots
- **Secure connection:** Provides enhanced security through a last-mile VPN
- **Seamless experience:** Automatically connects to the strongest broadband signal
- **Closes the homework gap:** Permits tethering of laptops, tablets, and other peripheral devices

Telrite's Premium Wi-Fi is BIAS. It is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. Telrite's Premium Wi-Fi also meets the definition of **mobile BIAS** because it serves end users primarily using mobile stations.

The Commission need not classify “Wi-Fi,” which is a wireless local access link, in order to declare that Telrite’s Premium Wi-Fi service, which includes both the wireless local access component and the underlying broadband access, is BIAS that may be used to meet the broadband minimum service standards.

Telrite’s Premium Wi-Fi promotes consumer choice. Telrite’s Premium Wi-Fi service offers consumers an unlimited amount of data on network connections that are typically faster than traditional 3G cellular data service. For Lifeline subscribers who chose a service provider based on the data component of a bundled service offering, they can in many markets now choose between Telrite’s Premium Wi-Fi service, a unique service with unlimited data and faster speeds, but with more limited coverage, and other ETCs’ more limited and slower 500 MB 3G cellular service offerings that offer more geographically widespread availability.

The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider’s own cellular data network. Today’s technology-neutral Lifeline program rules do not in any way limit the definition of mobile BIAS to services provided over a cellular data network. Indeed, innovative services that utilize unlicensed spectrum are not excluded from definition of mobile BIAS. Non-Lifeline subscribers may choose Wi-Fi-enabled mobile broadband service and other innovative service offerings from cable companies and others, or they may choose more familiar all-cellular offerings. Lifeline-eligible subscribers should be able to make similar choices based on the plans that are the most affordable and best serve their needs.

The Commission should decline any requests for “clarification” that would rewrite the Lifeline rules:

- Contrary to TracFone’s claim, 3G is the governing speed threshold for mobile BIAS in the Lifeline program. TracFone’s suggestion that 3G data is not BIAS is really a request for a rule change.
- TracFone’s assertion that consumer devices must be “smartphones” is a claim without basis in the Lifeline rules. TracFone is requesting a new rule, rather than clarification of an existing one.
- TracFone’s suggestion that mobile BIAS cannot be provided through the resale of underlying provider networks would render its business model untenable. Nothing in today’s Lifeline rules supports or can be “clarified” to support TracFone’s assertion.
- Sprint’s assertion that mobile BIAS must “provide service in locations (such as a Lifeline customer’s home) that otherwise lack[] broadband access” is not only unsupported by today’s Lifeline program rules, it makes no sense for a program focused on making available broadband access affordable.
- Sprint’s proposal to limit Lifeline support to services provided over an ETC’s own cellular network—i.e., facilities-based cellular providers—would render TracFone, Telrite, and every other major Lifeline service provider reliant on resale unable to provide such service.

Exhibit E

Telrite Corporation d/b/a Life Wireless
Consumer Choice, Innovation, and the Future of the Lifeline Program

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- **Seamless experience:** Automatically connects to the strongest broadband signal
- **Closes the homework gap:** Permits tethering of laptops, tablets, and other peripheral devices

Telrite's Premium Wi-Fi is BIAS. It is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. Telrite's Premium Wi-Fi also meets the definition of **mobile BIAS** because it serves end users primarily using mobile stations.

The Commission need not classify “Wi-Fi,” which is a wireless local access link, in order to declare that Telrite’s Premium Wi-Fi service, which includes both the wireless local access component and the underlying broadband access, is BIAS that may be used to meet the broadband minimum service standards.

Telrite’s Premium Wi-Fi promotes consumer choice. Telrite’s Premium Wi-Fi service offers consumers an unlimited amount of data on network connections that are typically faster than traditional 3G cellular data service. For Lifeline subscribers who chose a service provider based on the data component of a bundled service offering, they can in many markets now choose between Telrite’s Premium Wi-Fi service, a unique service with unlimited data and faster speeds, but with more limited coverage, and other ETCs’ more limited and slower 500 MB 3G cellular service offerings that offer more geographically widespread availability.

The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider’s own cellular data network. Today’s technology-neutral Lifeline program rules do not in any way limit the definition of mobile BIAS to services provided over a cellular data network. Indeed, innovative services that utilize unlicensed spectrum are not excluded from definition of mobile BIAS. Non-Lifeline subscribers may choose Wi-Fi-enabled mobile broadband service and other innovative service offerings from cable companies and others, or they may choose more familiar all-cellular offerings. Lifeline-eligible subscribers should be able to make similar choices based on the plans that are the most affordable and best serve their needs.

The Commission should decline any requests for “clarification” that would rewrite the Lifeline rules:

- Contrary to TracFone’s claim, 3G is the governing speed threshold for mobile BIAS in the Lifeline program. TracFone’s suggestion that 3G data is not BIAS is really a request for a rule change.
- TracFone’s assertion that consumer devices must be “smartphones” is a claim without basis in the Lifeline rules. TracFone is requesting a new rule, rather than clarification of an existing one.
- TracFone’s suggestion that mobile BIAS cannot be provided through the resale of underlying provider networks would render its business model untenable. Nothing in today’s Lifeline rules supports or can be “clarified” to support TracFone’s assertion.
- Sprint’s assertion that mobile BIAS must “provide service in locations (such as a Lifeline customer’s home) that otherwise lack[] broadband access” is not only unsupported by today’s Lifeline program rules, it makes no sense for a program focused on making available broadband access affordable.
- Sprint’s proposal to limit Lifeline support to services provided over an ETC’s own cellular network—i.e., facilities-based cellular providers—would render TracFone, Telrite, and every other major Lifeline service provider reliant on resale unable to provide such service.

Exhibit F

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

February 17, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Telrite Corporation d/b/a Life Wireless Notice of Oral Ex Parte
Presentation; WC Docket Nos. 09-197, 10-90, 11-42**

Dear Ms. Dortch:

On February 15, 2017, Susan Berlin of Telrite Corporation d/b/a Life Wireless (Telrite or the Company) and John Heitmann and Jameson Dempsey of Kelley Drye & Warren LLP met with Trent Harkrader of the Federal Communications Commission (FCC or Commission) Wireline Competition Bureau (Bureau) and Ryan Palmer, Jodie Griffin, Garnet Hanly and Rashann Duvall of the Bureau's Telecommunications Access Policy Division (TAPD) to follow up on the Company's January 27, 2017 ex parte letter¹ and the recent ex parte letters of TracFone² and Sprint.³

¹ See Letter from John Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 27, 2017).

² See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017) (TracFone Request for Clarification); Letter from Mitchell Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 14, 2017) (TracFone WCB/TAPD Letter); Letter from Mitchell Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 14, 2017).

³ See Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan.

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February 17, 2017
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In the meeting, Telrite distributed and discussed the points made in the attached presentation. Telrite highlighted that its new mobile BIAS Lifeline service plans offer consumers robust and unique service offers made possible because of the Commission's decision to foster stability in customer-carrier relationships through the extension of the benefit port freeze.⁴ In addition, Telrite offers the following points regarding devices reasonably deemed necessary for consumers to make use of mobile BIAS services and about the nature of services that meet the current definition of mobile BIAS.

Devices. Telrite agrees that consumers receiving mobile BIAS offerings should have devices capable of handling such service. In the context of today's Lifeline program, those devices should be capable of handling data at 3G or better speeds.⁵ Telrite provides all of its customers with 3G-or-better SIM cards and handsets, and enables consumers to bring their own 3G-or-better devices to use with Telrite's Lifeline service offerings.⁶

Mobile BIAS. Telrite provides its Lifeline subscribers with a variety of products that meet or exceed the Lifeline Modernization Order's minimum service standards, including plans that offer cellular data as well as plans that offer unlimited Premium Wi-Fi service. Telrite does not rely on free public Wi-Fi to meet these standards. Instead, Telrite's Premium Wi-Fi service offering provides secure VPN access to iPass's private network of 34 million access points,⁷ which include private home and commercial access points.⁸ Telrite's unlimited Premium Wi-Fi

19, 2017) (Sprint Request for Clarification); Letter from Norina Moy, Government Affairs, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Feb. 15, 2017) (Sprint WCB/TAPD Letter).

⁴ See 47 C.F.R. § 54.411(a).

⁵ Contrary to TracFone's claim, 3G is the governing speed threshold for mobile BIAS in the Lifeline program. See 47 C.F.R. § 54.408(b)(2). TracFone's request for clarification on this issue is really a request for a rule change. See TracFone WCB/TAPD Letter, Enclosure at 1.

⁶ TracFone's assertion that these devices must be "smartphones" is yet another claim without basis in the current Lifeline program rules. See TracFone Request for Clarification at 2-3. Once again, TracFone is requesting a new rule, rather than clarification of an existing one.

⁷ Telrite provides this service through the resale of iPass's network. TracFone's suggestion that mobile BIAS cannot be provided through the resale of underlying provider networks would render its business model untenable. See TracFone WCB/TAPD Letter, Enclosure at 1 (asserting that BIAS "provided by others" cannot count as BIAS). Once again, nothing in today's Lifeline rules supports or can be "clarified" to support TracFone's assertion.

⁸ Sprint's assertion that mobile BIAS must "provide service in locations (such as a Lifeline customer's home) that otherwise lack[] broadband access" is not only unsupported by today's

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offering provides consumers with a compelling alternative to the cellular-data-centric plans offered by most Lifeline ETCs today. Telrite's Premium Wi-Fi service offers consumers an unlimited amount of data on network connections that are typically faster than traditional 3G cellular data service. For Lifeline subscribers who chose a service provider based on the data component of a bundled service offering, they can in many markets now choose between Telrite's Premium Wi-Fi service, a unique service with unlimited data and faster speeds, but with more limited coverage,⁹ and other ETCs' more limited and slower 500 MB 3G cellular service offerings that offer more geographically widespread availability.¹⁰

The Lifeline Modernization Order expressly calls for innovation in service offerings and in no way limits the definition of mobile BIAS to mobile data services provided over a provider's own cellular data network.¹¹ Today's technology-neutral Lifeline program rules do not in any way limit the definition of mobile BIAS to services provided over a cellular data network. Indeed, innovative services that utilize unlicensed spectrum are not excluded from definition of mobile BIAS. Telrite's Premium Wi-Fi service meets the definition of mobile BIAS and the Commission should reject calls to rewrite the rules in a manner that would limit mobile BIAS to cellular data service. Non-Lifeline subscribers may choose Wi-Fi-enabled mobile broadband service and other innovative service offerings from cable companies and others, or they may choose more familiar all-cellular offerings. Lifeline-eligible subscribers should be able to make similar choices based on the plans that are the most affordable and best serve their needs. Fortunately, today's Lifeline program rules allow them to do just that. The Commission should decline any requests for "clarification" that would rewrite these rules so as to preclude access to the kinds of innovative and robust service offerings the Commission had hoped to spur through expansion of the port freeze to mobile BIAS offerings.

Lifeline program rules, it makes no sense for a program focused on making available affordable broadband access. *See* Sprint WCB/TAPD Letter at 1.

⁹ Telrite provides these subscribers with 10 MB of cellular data for free with the option to purchase additional cellular data at competitive rates.

¹⁰ Depending on the handset used with these plans, consumers can typically access unsecure public Wi-Fi networks for additional data. Most ETCs make available additional cellular data at competitive prices.

¹¹ *See* Lifeline Modernization Order ¶¶ 49 & n.132, 373. Sprint's proposed standard would render TracFone and every other major Lifeline service provider reliant on resale unable to provide such service. *See* Sprint WCB/TAPD Letter at 1; Sprint Request for Clarification at 1.

KELLEY DRYE & WARREN LLP

Marlene Dortch
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Pursuant to Section 1.1206(b) of the FCC's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Jameson J. Dempsey
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

*Counsel to Telrite Corporation d/b/a Life
Wireless*

cc: Nick Degani
Rashann Duvall
Jodie Griffin
Garnet Hanly
Trent Harkrader
Ryan Palmer
Jay Schwarz

Enclosure

ENCLOSURE

Telrite Corporation d/b/a Life Wireless Meeting with WCB

February 15, 2017

Overview

“By allowing support for standalone broadband services with Lifeline, we add an additional measure of consumer choice as well as the opportunity for innovative providers to serve low-income consumers in new ways.” – LMO ¶ 49 & n.132

1. Telrite’s plans and devices comply with the letter and spirit of the Lifeline Modernization Order (LMO) and are made possible by the 12-month benefit port freeze
2. Telrite’s Premium Wi-Fi is BIAS that meets the Lifeline broadband minimum service standards
3. Telrite’s handsets meet the requirements of the LMO

Telrite's plans comply with the LMO

Customer	DEVICE*	COST	TALK	TEXT	DATA	MMS
Legacy feature phone subscribers	3G-capable handset with Internet browser**	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 500 MB Cellular	25
Legacy smartphone subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
New subscribers	Smartphone	FREE	500 Min	Unlimited	Unlimited Premium Wi-Fi + 10 MB Cellular	25
Tribal (OK)	Smartphone	FREE	Unlimited	Unlimited	Unlimited Premium Wi-Fi + 1 GB Cellular	100

*Since 2014, all subscriptions have come with a 4G/LTE SIM card. Previously, all SIM cards were 3G capable

**Free upgrade to smartphone available after 180 days of service

What is Telrite's Premium Wi-Fi?

- Telrite's Premium Wi-Fi is a broadband service that leverages the nationwide access point network of iPass, a Premium Wi-Fi service provider
 - **Broad coverage:** 34 million broadband access points via Wi-Fi in the US alone
 - **Seamless experience:** Automatically connects to the strongest broadband signal
 - **Secure connection:** Provides enhanced security through a last-mile virtual private network (VPN)
 - **Closes the homework gap:** Permits tethering of laptops, tablets, and other peripheral devices
- Telrite's Premium Wi-Fi is distinguishable from traditional free, public Wi-Fi services and public Wi-Fi aggregators

Telrite's Premium Wi-Fi is BIAS

- **Telrite's Premium Wi-Fi meets the definition of BIAS:**
 - A mass-market retail service
 - By wire or radio
 - Provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service
- **Telrite's Premium Wi-Fi also meets the definition of mobile BIAS.** Premium Wi-Fi is BIAS that serves end users primarily using mobile stations
- **The Commission need not classify "Wi-Fi," which is a wireless local access link,** in order to declare that Telrite's Premium Wi-Fi service, which includes both the wireless local access component and the underlying broadband access, is BIAS that may be used to meet the broadband minimum service standards

Telrite's Premium Wi-Fi meets the speed and quality MSS of the LMO

- The LMO requires Lifeline-supported mobile broadband to offer at least 3G speeds. (LMO ¶ 96)
 - The LMO does not define “3G,” but the *2011 USF/ICC Transformation Order* found that a 3G network “meet[s] or exceed[s] an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices”
 - Telrite's Premium Wi-Fi provides speeds well above 3G speeds
- Because it relies on fixed BIAS networks, Telrite's Premium Wi-Fi also provides speeds as good as or better than traditional fixed BIAS
- Telrite's Premium Wi-Fi meets the 500 MB data minimum service standard, offering consumers *unlimited* data through Premium Wi-Fi
- Telrite's Premium Wi-Fi is proof that the letter and spirit of the broadband benefit port freeze is working as intended to spur innovation, adoption, smartphone distribution, more robust service plans for consumers and healthy competition

Telrite's 3G-enabled handsets meet the requirements of the LMO

- 70 percent of Telrite's consumers have smartphones
- The LMO does not require ETCs to provide smartphones to consumers. Rather, if an ETC provides handsets to consumers, (1) all devices must be Wi-Fi enabled and (2) the ETC must make available hotspot-capable devices. (LMO ¶ 366-367)
- On GSM networks, the operative equipment is the SIM card, which the provider always controls, and not the device
- Telrite's 3G handsets provide access to BIAS through a pre-installed Internet browser
- Handsets also provide access to specialty applications (e.g., Twitter) and email
- The Commission should declare that, as long as a device is able to support 3G or better speeds and the service plan includes at least 500 MB of data, the service is eligible for the 12-month benefit port freeze

Telrite's Lifeline offerings comply with the letter and spirit of the LMO

“We encourage Lifeline providers to continue to push the envelope in search of better ways to deliver broadband to their subscribers.” – LMO ¶ 373

- Telrite offers traditional plans that include cellular access to broadband, as well as plans that include access to broadband via Premium Wi-Fi
- While the substantial majority of customers have smartphones, all have devices capable of accessing the Internet at 3G or higher speeds
- The letter and spirit of the broadband benefit port freeze is working as intended to spur innovation, adoption, smartphone distribution, more robust service plans for consumers and healthy competition

Exhibit G

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

January 27, 2017

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Telrite Corporation d/b/a Life Wireless Ex Parte Presentation;
WC Docket Nos. 11-42, 09-197, 10-90**

Telrite Corporation d/b/a Life Wireless (Telrite), by its attorneys, submits this letter in response to the January 18, 2017 ex parte letter of TracFone Wireless, Inc. (TracFone) and the January 19, 2017 ex parte letter of Sprint Corporation (Sprint) seeking clarification from the Federal Communications Commission (FCC or Commission) and its Wireline Competition Bureau (Bureau) on several issues related to the Lifeline Modernization Order.¹

¹ See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017) (TracFone Letter); Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 19, 2017) (Sprint Letter); see also *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order). In its letter, TracFone asks the Commission and the Bureau to clarify (1) that the revised Lifeline rules only permit 12-month benefit port freezes on broadband Lifeline services that meet the 500 MB minimum service standard for mobile broadband services, (2) that Lifeline service provided to consumers using feature phones does not enable Lifeline consumers to utilize Broadband Internet Access Service (BIAS) as that term is defined in the Commission's rules, and (3) that broadband access through Wi-Fi does not meet the 500 MB minimum standard. See TracFone Letter at 3. Sprint asks for clarification about whether Wi-Fi can be used to meet the minimum data allotment requirement and whether the 3G technology standard is met if a Lifeline ETC provides the subscriber who is classified as a broadband customer with a feature phone that cannot accommodate such technology. See Sprint Letter at 1-2.

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In section I below, Telrite explains that its plans and devices comply with the letter and spirit of the Lifeline Modernization Order, and are made possible by the 12-month benefit port freeze. In section II, Telrite explains that the Lifeline Modernization Order does not require eligible telecommunications carriers (ETCs) to give consumers a smartphone to meet the mobile broadband minimum service standards or qualify for the 12-month benefit port freeze. In section III, Telrite respectfully submits that, for the purposes of ensuring a level-playing field and encouraging an innovative and technology neutral Lifeline program, that the Commission should declare that Telrite's Premium Wi-Fi service meets the definition of BIAS and may be used to meet the applicable broadband minimum service standards.

I. Telrite's Plans and Devices Comply with the Letter and Spirit of the Lifeline Modernization Order and Are Made Possible by the 12-Month Benefit Port Freeze

Telrite's Lifeline-supported broadband plans comply with the letter and the spirit of the Lifeline Modernization Order. In the Lifeline Modernization Order, the Commission places a premium on the development and deployment of innovative service offerings, including Wi-Fi services.² Telrite's broadband Lifeline plans answer the Commission's call. Telrite's offerings include plans with 500 MB or more of cellular data, as well as plans with unlimited access to broadband via Premium Wi-Fi through the resale of iPass's nationwide network of over 34 million broadband access points. Plans featuring unlimited access to iPass's broadband network are available only for customers with smartphones and offer consumers 500 minutes of voice service, unlimited text messages, unlimited access to iPass's broadband data network (and a last-mile virtual private network (VPN)), and an additional allotment of 10 MB of cellular data.³ Because the smartphones Telrite distributes are Wi-Fi enabled, customers also have unlimited access to typically free public, home and community anchor institution Wi-Fi networks. Further, because Telrite's smartphones are hotspot capable, subscribers can connect other devices—such as tablets and laptops—to BIAS through their handset, further enhancing the value of their service. These plans demonstrate that Telrite is laser-focused on achieving the Commission's goals of closing the digital divide⁴ and connecting low-income Americans to jobs, education, government services, family, and community.

² See Lifeline Modernization Order, ¶ 49 & n.132 (“By allowing support for standalone broadband services with Lifeline, we add an additional measure of consumer choice as well as the opportunity for innovative providers to serve low-income consumers in new ways.”).

³ Notably, this plan meets the minimum service standard for voice as well as broadband.

⁴ See Remarks of Chairman Ajit Pai, Federal Communications Commission (Jan. 24, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

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Telrite's broadband plans include BIAS that meets the letter and spirit of the Lifeline Modernization Order. As explained in more detail in section II below, for new subscribers, Telrite's broadband plans include unlimited access to Premium Wi-Fi. Telrite's Premium Wi-Fi provides the mobility of traditional cellular BIAS and speeds that exceed the Commission's mobile (3G) minimum speed standards and are backed by fixed networks with speeds as good as or better than traditional fixed BIAS. Because it provides unlimited broadband each month, Telrite's Premium Wi-Fi service meets the Commission's 500 MB mobile BIAS and 150 GB fixed BIAS minimum monthly data quantity standards. Where Telrite's Premium Wi-Fi is not available, Telrite also provides at no cost to the consumer a bucket of cellular data that consumers can use as a backup.⁵ To enhance security, Telrite's Premium Wi-Fi service transits over a last-mile VPN, which Telrite provides to its customers free of charge. In total, Telrite's basic broadband plan featuring unlimited access to iPass offers consumers a \$34 value, free of charge, every month.

Telrite's handsets also meet the letter and spirit of the Lifeline Modernization Order. All new Telrite subscribers receive an Android smartphone free of charge upon enrollment, and Telrite offers subscribers who have been active for 180 days a free one-time upgrade to a smartphone. Subscribers who are not eligible for the smartphone upgrade may purchase a smartphone for as little as \$35. At this point, any subscriber with a 3G non-smartphone has had the opportunity to obtain a replacement smartphone for free. As a result, today nearly 70 percent of Telrite subscribers have smartphones, and that number is increasing rapidly as consumers continue to transition to smartphones. Further, since 2014, all Telrite subscribers have received a 4G/LTE-capable SIM card that can be used with any 3G-or-better device, and Telrite's 3G-capable devices (including non-smartphones) contain a web browser and email functionality that enables users to transmit data to and receive data from all or substantially all Internet endpoints.⁶ A significant proportion of these 3G-capable devices also contain a QWERTY keyboard and specialized applications to facilitate communications and Internet browsing.

These plans and devices are made possible because the 12-month benefit port freeze has helped to curb abusive "flipping"⁷ and to incentivize additional investment in innovative services, such as Premium Wi-Fi. Indeed, based on TracFone's letter⁸ and Telrite's experience, the benefit port freeze appears to be working: it is spurring innovative BIAS offerings and more bang for the

⁵ Consumers can purchase additional access to cellular data at affordable rates and at increments as low as \$9.95 for 400 MB.

⁶ Prior to 2014, Telrite distributed 3G-capable SIM cards.

⁷ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Respondents' Opposition to Petitions for Reconsideration, 3-6 (filed July 29, 2016) (citing comments and ex parte letters referencing the 12-month benefit port freeze).

⁸ See TracFone Letter at 1.

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Page Four

federal buck, providing a velocity check on abusive practices, and driving smartphone distribution among Lifeline eligible low-income consumers.

II. The Lifeline Modernization Order Does Not Require ETCs to Provide Consumers with a Smartphone to Meet the Broadband Minimum Service Standards or to Qualify for the 12-Month Benefit Port Freeze

In its letter, TracFone seeks clarification that Lifeline service provided to consumers using feature phones does not enable Lifeline subscribers to utilize BIAS, as that term is defined in the Commission's rules.⁹ TracFone asserts that only a smartphone can provide access to mobile BIAS. Sprint seeks clarification on the issue of "whether service providers may classify a subscriber as a Lifeline broadband customer if the device they have provided cannot handle 3G speeds."¹⁰ Telrite submits that no clarification is needed. The Lifeline Modernization Order is already clear: when a device is provided with a Lifeline mobile broadband service, it need not be a smartphone, but the subscriber must receive the capability to access mobile data at 3G speeds to meet the mobile broadband minimum service standard.¹¹ For example, a consumer may receive a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone. Further, Lifeline providers may claim the 12-month benefit port freeze so long as they provide a service that meets the applicable minimum service standards, irrespective of whether they provide a smartphone, a mobile hotspot or any other device.¹²

First, it bears noting that the definition of BIAS does not dictate particular kinds of devices used to access BIAS, whether fixed or mobile.¹³ In particular, the definition of mobile BIAS does not include a smartphone requirement. BIAS is a "mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service."¹⁴ Further, while mobile BIAS "serves end users primarily using mobile stations," the definition of "mobile station" is broad, encompassing any "radio-communication station capable of being moved and which ordinarily does

⁹ See *id.* at 3.

¹⁰ See Sprint Letter at 2.

¹¹ See 47 C.F.R. § 54.408(b)(2)(i); Lifeline Modernization Order ¶ 96.

¹² The Commission's rules do not require carriers to provide a device to Lifeline subscribers; like other subscribers, they may bring their own.

¹³ 47 C.F.R. § 8.2(a).

¹⁴ *Id.*

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January 27, 2017
Page Five

move.”¹⁵ This definition is not limited to smartphones; indeed, in the very next sentence, the Commission notes that mobile BIAS “*also includes services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.*”¹⁶ These passages demonstrate that the Commission did not intend to limit mobile BIAS to services provisioned in connection with a smartphone, but rather that mobile BIAS may be accessed through a number of means, including but not limited to smartphones and tablets.

Second, the Lifeline Modernization Order does not require Lifeline providers to provide a smartphone in order to receive a subsidy or qualify for the 12-month benefit port freeze. Not only did the Lifeline Modernization Order reject calls to subsidize handsets,¹⁷ neither the rules nor the Lifeline Modernization Order require the provision of a handset at all, let alone a smartphone. Instead, the rules only require that in order to receive Lifeline reimbursement, an ETC must meet the applicable minimum service standards, and that on a going forward basis, if a provider provides a device to the customer, it must be Wi-Fi enabled.¹⁸

Third, focusing on the particular handset ignores technical and practical realities. Specifically, on GSM networks, like the network over which Telrite provides cellular data, the operative piece of equipment is the user’s SIM card, which is tied to the user’s account and enables voice and broadband service. The SIM is the only piece of equipment required in order for the user to establish an account. With respect to the handset, the subscriber has a choice at enrollment: obtain a handset from the provider, purchase a compatible handset from Telrite or a third-party, or use a previously purchased compatible handset (“bring your own device”—BYOD). Subscribers may change their handset at any time, connecting a smartphone on one day and popping the SIM into a 3G-capable non-smartphone device on the next, without the provider’s knowledge or permission. This is a good thing. It promotes consumer choice and handset innovation, and enables subscribers to use the device with which they are most comfortable. For some users, their device of choice may be a smartphone, while for others—particularly the elderly—their device of choice may be a 3G-capable non-smartphone. All along, however, the SIM card remains the same, and establishes the upper-bound of the service plan’s BIAS capability. In Telrite’s case, since 2014 it has been providing consumers with 4G/LTE-capable SIM cards, and before then all of its SIM cards were 3G-capable. Consequently, all Telrite subscribers have the capability to access 3G or better speeds. As such, if the Commission decides to establish an implicit equipment

¹⁵ See 47 C.F.R. § 8.2(e); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 188 (rel. Mar. 12, 2015) (2015 Open Internet Order).

¹⁶ See *id.* (emphasis added).

¹⁷ See Lifeline Modernization Order ¶ 373.

¹⁸ See *id.* ¶ 96; 47 C.F.R. §§ 54.408(b)(2)(i), (f)(1).

Marlene Dortch, Secretary
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requirement—which Telrite submits is unnecessary—it should judge compliance with the rules in the GSM context based on the capabilities of the underlying SIM, which the provider controls, rather than the device connected to the SIM, which the provider may not control.

Fourth, 3G-capable non-smartphones, including those that Telrite previously provided to its subscribers and that some subscribers continue to use, do provide access to BIAS. As explained above in section I, 3G-capable non-smartphone devices can and do provide users with on-device browsers, email, and applications that enable users to transmit data to and receive data from all or substantially all Internet endpoints in a manner that meets the definition of BIAS under 47 C.F.R. § 8.2. In Telrite’s case, its non-smartphone handsets provide the capability of broadband access at 3G or better speeds and have built-in web browsers, and many have full QWERTY keyboards and can download specialized social media applications (e.g., Twitter). As such, it is false to say that Lifeline subscribers with feature phones “are not able” to transmit data to and receive data from all or substantially all Internet endpoints.

While it is clear that the Lifeline Modernization Order did not condition application of the 12-month benefit port freeze for BIAS plans on distribution of a smartphone, Telrite acknowledges that the distribution of smartphones and investment in innovative service plans was a primary justification for extending the port freeze requirement to broadband.¹⁹ As explained in section I above, Telrite is offering smartphones to all new customers, as well as to existing customers. It is offering plans that meet or exceed the minimum service standards for BIAS. In short, Telrite not only has met the letter and spirit of the new regulatory requirements, it has gone above and beyond to ensure that Lifeline-eligible consumers have access to innovative plans, services and devices that include plans that offer more broadband than a monthly tranche of 500 MB of cellular data.

Although the Lifeline Modernization Order requires no clarification on whether a smartphone is a prerequisite for access to mobile BIAS (it is not), if the Commission determines a declaration is necessary, it should declare that if a provider offers a device with its Lifeline-supported broadband service, the provider need not provide consumers with a smartphone in order to seek reimbursement or avail itself of the 12-month benefit port freeze, so long as the underlying service and device enables access to BIAS at 3G or better speeds (e.g., through a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone).

¹⁹ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 et al., Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, 17 (Aug. 31, 2015).

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III. Premium Wi-Fi Is BIAS and Premium Wi-Fi Offerings Can Meet the Lifeline Broadband Minimum Service Standards

In their respective letters, TracFone and Sprint submit that Wi-Fi does not meet the Lifeline broadband minimum service standard, and seek clarification from the Commission.²⁰ Specifically, TracFone asks the Commission to clarify that “broadband access through Wi-Fi does not meet the 500 MB minimum standard” and Sprint asks “the FCC to clarify whether a Lifeline ETC that offers less than 500 MB of primary (non-Wi-Fi) data is or is not meeting the minimum service standard,” arguing that “Wi-Fi access in any form does not count toward meeting the minimum mobile broadband service requirement.”²¹ Telrite respectfully submits that its provision of broadband via Premium Wi-Fi indeed qualifies as BIAS. However, for the purposes of ensuring a level-playing field and encouraging an innovative and technology neutral Lifeline program, Telrite also submits that the Commission should declare that its Premium-Wi-Fi-supported broadband meets the definition of BIAS and may be used to meet the broadband minimum service standards.²²

As a threshold matter, Telrite’s Premium-Wi-Fi-supported broadband service is BIAS. Telrite’s Premium Wi-Fi is a mass-market retail service that enables a consumer to access a network of BIAS connections—including but not limited to cable broadband providers—over Wi-Fi through an application on the user’s smartphone. Unlike services that merely aggregate open Wi-Fi networks, Telrite’s Premium Wi-Fi relies on negotiated arrangements between the underlying Premium Wi-Fi provider and the underlying broadband providers. When a user accesses the Internet through Telrite’s Premium Wi-Fi, the Wi-Fi connection provides the local network link between the consumer’s device and the underlying BIAS networks, just as is the case with mobile cellular broadband or fixed broadband accessed through a smartphone. As stated above, Telrite resells the network of iPass, which currently provides access to over 34 million broadband access points throughout the United States, and more globally, providing a dense network that users can access at home or on the go. Telrite’s Premium Wi-Fi also includes several features that distinguish it from traditional public Wi-Fi networks. These services include a secure connection through a last-mile VPN; a seamless experience that enables automatic connection to the strongest broadband signal in the area; and an app with speed test and hotspot finder functionality. In this way, Telrite’s

²⁰ See Sprint Letter at 2. In the Lifeline Modernization Order, the Commission includes BIAS as a supported service. See Lifeline Modernization Order ¶ 39.

²¹ See TracFone Letter at 3; Sprint Letter at 2.

²² As described above, the broadband Premium Wi-Fi Telrite resells and incorporates into some of its Lifeline service offerings is distinguishable from free public Wi-Fi. The service has a market value of \$25 and it provides access through a secure VPN connection (an additional \$9 value) to a vast nationwide network of Wi-Fi broadband access points, similar to the manner in which cellular data service provides secure access to a nationwide network of cellular access points.

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Premium Wi-Fi provides an experience with mobility like cellular BIAS and speeds that meet or exceed those of fixed BIAS.²³

Further, Telrite's Premium Wi-Fi is BIAS that meets the applicable mobile broadband minimum speed standards and traverse fixed network sources that are as fast as or faster than traditional fixed BIAS networks. To be eligible for Lifeline support, mobile BIAS must provide "3G or higher" speed service.²⁴ This reference to 3G is not meant to require a specific cellular or "primary" broadband delivery technology, but rather to serve as a proxy for the speed of service. Indeed, in the 2011 USF/ICC Transformation Order, the FCC established minimum speed standards using the generation (e.g., 3G) as a proxy for a specific speed.²⁵ A 3G network "meet[s] or exceed[s] an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices."²⁶ Here, if a consumer were to access the Internet via Premium Wi-Fi service, the speeds would exceed the 3G speed threshold. Moreover, the Commission has confirmed that mobile BIAS is not limited to cellular connections, but rather "*also includes services*" such as Premium Wi-Fi "that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet."²⁷ This expansive definition makes sense—if the Commission were to limit support for mobile BIAS to cellular data connections, it would effectively foreclose those innovative service offerings that it expressly seeks to promote, including popular "Wi-Fi First" offerings. Furthermore, because Telrite's Premium Wi-Fi service relies on a network of fixed connections, the service speed meets or exceeds those of traditional fixed BIAS networks. In addition, contrary to Sprint's assertions, no support can be found in the Lifeline Modernization Order or the new Lifeline rules that broadband data must be carried over the "ETC's own cellular network" to qualify for reimbursement. Indeed, the Commission has long permitted carriers to receive broadband support through the resale of another carrier's network, and it does not disturb this finding in the Lifeline Modernization Order.²⁸ Finally, the Lifeline Modernization Order actively encourages providers to offer "new, innovative products and services" that "push the envelope in search of better ways to

²³ If the Commission determines that Telrite's Premium Wi-Fi is not mobile BIAS, the service may still be considered fixed BIAS. Specifically, while Premium Wi-Fi uses smartphones and mobile-network-enabled tablets as the primary endpoints for connection to the Internet, meeting the definition of mobile BIAS, it also enables connectivity in a manner similar to traditional Wi-Fi connections to fixed BIAS connections.

²⁴ See Lifeline Modernization Order ¶¶ 96, 105.

²⁵ See Connect America Fund, et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 362 (rel. Nov. 18, 2011).

²⁶ *Id.* ¶ 361.

²⁷ See 2015 Open Internet Order ¶ 188 (emphasis added).

²⁸ See Lifeline Modernization Order ¶¶ 45, 242 (citations omitted).

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delivery broadband to . . . subscribers.”²⁹ As such, any BIAS offering is eligible for monthly Lifeline reimbursement so long as the provider meets the Commission’s speed and quantity minimum service standards.

Here, Telrite’s broadband plans featuring unlimited broadband via Premium Wi-Fi comply with the applicable broadband quantity minimum service standards. Telrite provides³⁰ consumers with *unlimited* Premium Wi-Fi each month at no cost, far exceeding the Commission’s 500 MB mobile minimum service standard and the 150 GB fixed broadband minimum service standard. Further, when subscribers use Premium Wi-Fi, they achieve speeds that exceed the mobile BIAS minimum service standards and include performance characteristics that meet or exceed traditional fixed BIAS speeds. Because this offering meets the Commission’s minimum service standards, it is clear that the service qualifies for the 12-month benefit port freeze. For these reasons, the Commission should declare that Telrite’s Premium Wi-Fi is BIAS that meets the applicable minimum service standards.

* * *

While Telrite cannot speak for any other Lifeline ETC, it is clear that Telrite has not abused the expanded benefit port freeze requirements in any way. Instead, it offers traditional plans that include cellular access to broadband, as well as plans that include access to broadband via Premium Wi-Fi. While the majority of its customers on broadband plans have smartphones, others have devices capable of accessing the Internet at 3G or better speeds. To help transition subscribers into the broadband age, Telrite ensures that each customer has a variety of communications options, including voice and text. In short, the letter and spirit of the broadband benefit port freeze is working as intended to spur innovation, adoption, smartphone distribution, more robust service plans for consumers and healthy competition.

²⁹ See *id.* ¶ 373.

³⁰ Importantly, when Telrite resells Premium Wi-Fi to its subscribers, and those subscribers use the service to access the Internet, Telrite is properly considered the “provider” of the Premium Wi-Fi service, in a manner similar to the relationship between a mobile virtual network operator (MVNO) and its underlying mobile network operator (MNO).

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Pursuant to section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Jameson J. Dempsey
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

Counsel for Telrite Corporation d/b/a Life Wireless

cc: Kris Monteith
Trent Harkrader
Ryan Palmer
Garnet Hanly